

Report on the

Department of Insurance

Montgomery, Alabama



Department of Examiners of Public Accounts

50 North Ripley Street, Room 3201
P.O. Box 302251
Montgomery, Alabama 36130-2251

Ronald L. Jones, Chief Examiner

State of Alabama
Department of
Examiners of Public Accounts

Telephone (334) 242-9200
FAX (334) 242-1775

Ronald L. Jones
Chief Examiner

Mailing Address:
P.O. Box 302251
Montgomery, AL 36130-2251

Location:
Gordon Persons Building
50 North Ripley Street, Room 3201
Montgomery, AL 36104-3833

October 24, 2007

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

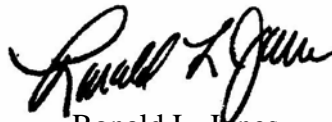
Dear Senator Dixon,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Department of Insurance** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Department of Insurance** in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronald L. Jones', written in a cursive style.

Ronald L. Jones
Chief Examiner

Examiners
Maria L. Catledge
Julie Garner
Christine Parish

CONTENTS

PROFILE.....	1
Purpose/Authority	1
Operations	2
Financial.....	6
SIGNIFICANT ITEMS.....	7
STATUS OF PRIOR FINDINGS.....	7
ORGANIZATION	15
PERSONNEL	17
PERFORMANCE CHARACTERISTICS	18
SMART BUDGETING.....	23
REGULATION IN CONJUNCTION WITH OTHER ENTITIES	26
FINANCIAL INFORMATION	26
Operating Funds/Accounts	26
Collection of Premium Tax.....	27
Fee Schedule	29
Schedule of Cash Receipts, Disbursements and Balances.....	34
Operating Receipts vs. Operating Disbursements (Chart).....	35
QUESTIONNAIRES	36
Insurance Company	36
Insurance Producer	39
Pre-need Company.....	43
Pre-need Cemetery.....	51
APPENDICES	67
Smart Budget Reports	67
RESPONSE TO SIGNIFICANT ITEMS	75

PROFILE

Purpose/Authority

The Department of Insurance exercises regulatory authority over the following groups:

- **Insurance Companies and Insurance Producers-** Act 234, *Acts of Alabama 1951* created the Department of Insurance to regulate the insurance industry in Alabama. The department licenses and regulates insurance companies and insurance representatives of various types under authority of Title 27 of the *Code of Alabama 1975*. The creation and operation of the Department of Insurance is primarily addressed in Sections 27-2-1 through 27-2-55.

The 1994 federal *Insurance Fraud Prevention Act*, Act 18 USC 1033 places the Alabama Department of Insurance and the insurance regulatory agencies of other states in closer cooperation with federal authorities to combat insurance fraud.

- **Insurance Companies/Funeral Homes/Cemeteries in Receivership-** Act 1039, *Acts of Alabama 1975* codified in the *Code of Alabama 1975*, Sections 27-2-50 through 27-2-55 establishes and provides for the operations of a Receivership Division within the Department of Insurance to be responsible for managing or liquidating financially impaired or insolvent insurance companies. Chapter 32 of Title 27 addresses the rehabilitation, reorganization, conservation and liquidation of individual insurance companies, funeral homes and cemeteries.
- **Pre-need Funeral or Cemetery Funeral Merchandise and Services-** Act 2002-74, *Acts of Alabama 2002*, codified as the *Code of Alabama 1975*, Sections 27-17A-1 through 27-17A-56 provides regulation for the sale of pre-need funeral or cemetery merchandise and services.
- **Service Contracts Sold to Alabama Consumers-** Act 97-445, *Acts of Alabama 1997*, codified as the *Code of Alabama 1975*, Sections 8-32-1 through 8-32-12 provides for the regulation of service contracts sold to Alabama consumers.

The State Fire Marshal's Office, which operates within the Department of Insurance, carries out the following duties:

- **Enforcement of Laws Relating to Fire-** Act 701, *Acts of Alabama 1919*, created the State Fire Marshal's Office, which by law is a branch of the Department of Insurance. The Fire Marshal is responsible for the enforcement of laws relating to fire; adequacy of fire exits; and suppression and investigation of arson. The *Code of Alabama 1975*, Sections 36-19-1 through 36-19-44 governs the principal duties and responsibilities of the Fire Marshal regarding fire.

- **Sale and Use of Fireworks-** The Fire Marshal regulates the storage, sale and use of fireworks under authority of the *Code of Alabama 1975*, Section 8-17-210 through 8-17-226.
- **Storage, Sale, and Commercial Use of Explosives-** The Fire Marshal regulates the storage, sale, and commercial use of explosives under authority of the *Code of Alabama 1975*, Sections 8-17-240 through 8-17-256.
- **Fire Sprinkler Systems-** The Fire Marshal regulates the sale and installation of fire sprinkler systems under authority of the *Code of Alabama 1975*, Section 34-33-4.

<u>Operations</u>	
Chief Executive Officer	<p>Walter A. Bell, Commissioner of Insurance</p> <ul style="list-style-type: none"> ◆ Cabinet level position- appointed by governor ◆ Annual Salary \$84,962.40- set by governor ◆ Reimbursed actual expenses for travel on official business. <p><i>Code of Alabama 1975</i>, Section 27-2-2</p>
Location	<p>201 Monroe Street, Suite 1700 Montgomery, AL 36130</p> <p>(<i>Code of Alabama 1975</i>, Section 27-2-6 requires the office to be located in the State Capitol.)</p>
Examinations	<p><u>Insurance</u></p> <p>Insurance sales and service persons are required to take a licensing examination, presently administered by:</p> <ul style="list-style-type: none"> ◆ Bishop State Community College – Mobile (Wednesday & Thursday) ◆ Jefferson State Community College – Birmingham (Monday, Tuesday, Thursday & Friday) ◆ Trenholm State Technical College – Montgomery (Friday) ◆ University of Alabama – Huntsville (Various Tuesday & Friday Afternoons) ◆ University of Alabama – Tuscaloosa (Monday & Saturday- Once per Month) <p><i>Code of Alabama 1975</i>, Section 27-7-4.3</p>

	<table><tr><th colspan="6">Schedule of Insurance Examination Results</th></tr><tr><th></th><th>2003</th><th>2004</th><th>2005</th><th>2006</th><th>2007</th></tr><tr><td>Passed</td><td>1,000</td><td>2,481</td><td>3,229</td><td>3,028</td><td>1,577</td></tr><tr><td>Failed</td><td>612</td><td>1,666</td><td>2,092</td><td>2,359</td><td>1,243</td></tr><tr><td>Total</td><td>1,612</td><td>4,147</td><td>5,321</td><td>5,387</td><td>2,820</td></tr></table> <p><u>Fire Marshal</u></p> <p>Explosives “blasters” are required to take an examination administered by the Fire Marshal’s Office. Examinations are normally administered upon request at the Fire Marshal’s Office.</p> <p>Schedule of Commercial Blaster Examination Results</p> <table><tr><th></th><th>2004</th><th>2005</th><th>2006</th><th>2007</th></tr><tr><td>Passed</td><td>11</td><td>10</td><td>1</td><td>5</td></tr><tr><td>Failed</td><td>0</td><td>0</td><td>0</td><td>0</td></tr><tr><td>Total</td><td>11</td><td>10</td><td>1</td><td>5</td></tr></table> <p><i>Code of Alabama 1975</i>, Section 8-17-243(b)(3)</p>	Schedule of Insurance Examination Results							2003	2004	2005	2006	2007	Passed	1,000	2,481	3,229	3,028	1,577	Failed	612	1,666	2,092	2,359	1,243	Total	1,612	4,147	5,321	5,387	2,820		2004	2005	2006	2007	Passed	11	10	1	5	Failed	0	0	0	0	Total	11	10	1	5
Schedule of Insurance Examination Results																																																			
	2003	2004	2005	2006	2007																																														
Passed	1,000	2,481	3,229	3,028	1,577																																														
Failed	612	1,666	2,092	2,359	1,243																																														
Total	1,612	4,147	5,321	5,387	2,820																																														
	2004	2005	2006	2007																																															
Passed	11	10	1	5																																															
Failed	0	0	0	0																																															
Total	11	10	1	5																																															
Licensees	<table><tr><td>Insurance Companies</td><td>4,864</td></tr><tr><td>Producers, Adjusters, etc.</td><td>89,613</td></tr><tr><td>Fire Sprinkler Contractors</td><td>146</td></tr><tr><td>Fireworks Permits</td><td>1,110</td></tr><tr><td>Blasting Contractors</td><td>71</td></tr><tr><td>Certified Blasters</td><td>187</td></tr><tr><td>Fire Pumps</td><td>221</td></tr><tr><td>Total</td><td>96,212</td></tr></table>	Insurance Companies	4,864	Producers, Adjusters, etc.	89,613	Fire Sprinkler Contractors	146	Fireworks Permits	1,110	Blasting Contractors	71	Certified Blasters	187	Fire Pumps	221	Total	96,212																																		
Insurance Companies	4,864																																																		
Producers, Adjusters, etc.	89,613																																																		
Fire Sprinkler Contractors	146																																																		
Fireworks Permits	1,110																																																		
Blasting Contractors	71																																																		
Certified Blasters	187																																																		
Fire Pumps	221																																																		
Total	96,212																																																		
Renewals	<p><u>Insurance Company/Producer Licenses</u></p> <ul style="list-style-type: none">◆ Company licenses are renewed from March 1 through April 30, and expire on May 1.◆ All sales or service personnel licenses, for both property/casualty/surety and life/disability insurance expire on the last day of the licensee’s birth month.◆ All other insurance licenses (adjusters, surplus line brokers, business entities, etc.) expire on December 31.◆ Pre-need funeral and cemetery certifications expire on June 1. <p>Act 2006-299, <i>Acts of Alabama</i>, granted the department rule making authority to implement biennial licensing. In calendar year 2007, half of the producer licensees renew for one year,</p>																																																		

	<p>while the other half will renew for two years. In 2008, those that renewed for one year will renew for two years. After that, approximately one half of produces will renew their licenses each year.</p> <p><i>Code of Alabama 1975</i>, Section 27-2-17.1</p> <p><u>Fire Marshal's Office Licenses</u></p> <ul style="list-style-type: none"> ◆ Full-year firework permits expire annually on December 31. A grace period of two days is allowed for renewal. Seasonal firework permits are valid for the periods 06/20 to 07/10 and 12/15 to 01/02 as applicable. ◆ Blaster certifications and blasting contractor licenses expire one year from date of issuance with no grace period. ◆ Fire sprinkler installer licenses expire on September 30 with no grace period. <p>On line renewals are available for insurance licensees, but are not available for the Fire Marshal's Office licensees.</p>
Reciprocity	<p>An individual who applies for an insurance producer license in Alabama who was previously licensed for the same lines of authority in another state shall not be required to complete any pre-licensing education or examination. Individuals must be currently licensed in that state or the application must be received within 90 days of the cancellation of the applicant's previous license and in good standing in that state or the state's producer database records.</p> <p>A person licensed as an insurance producer in another state who moves to Alabama shall, within 90 days of establishing legal residence, make application to become a resident licensee. No pre-licensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the commissioner determines otherwise by regulation (<i>no regulation modifying this condition has been adopted</i>).</p> <p><i>Code of Alabama 1975</i>, Section 27-7-29.1</p>
Continuing Education	<p>Insurance Producers and Service Representatives- 24 hours biennially; additional 3 hour requirement in the biennial period on ethics. Office staff licensed as agents- 6 hours.</p> <p><i>Code of Alabama 1975</i>, Section 27-8A-1</p>

Employees	<u>Merit System Status</u>	
	Exempt	2
	Unclassified	2
	Classified	143*
	Total	147
	*Includes 28 employees of the State Fire Marshal's Office As of August 1, 2007	
Legal Counsel	6 Assistant Attorneys General- (Department employees) 1 Deputy Attorney General (Department employee) The Receivership Division utilizes the services of several private legal firms. <i>Code of Alabama 1975</i> , Section 27-2-11	
Subpoena Power	Yes, persons & records. <i>Code of Alabama 1975</i> , Section 27-2-26	
Internet Presence	www.aldoi.gov The site contains: <ul style="list-style-type: none"> ◆ Descriptive information on departmental divisions ◆ Online renewal portal ◆ Producer examination information ◆ Consumer complaint forms ◆ Licensure and fee information ◆ Informational news type bulletins ◆ Licensee information ◆ Continuing education information and providers ◆ Links to national organizations ◆ Hurricane Information ◆ Captive Law ◆ Job announcements ◆ Legal Hearings ◆ Español ◆ Policies 	

Attended Board Member Training	State Fire Marshal Chief Examiner Deputy Attorney General Accounting Manager Information Technology Manager Personnel Manager Examination Supervisor 2 Senior Accountants
<u>Financial</u>	
Source of Funds	<ul style="list-style-type: none"> ◆ <u>Insurance Regulatory Fees</u> – ½ of various statutory fees. ◆ <u>Insurance Examiners Division</u> – Fees from performing financial examinations of insurance companies. ◆ <u>Service Contract Fees</u> – Fees collected for the licensure of service contract providers. ◆ <u>Receivership Operations</u> – Recovered costs primarily derived from the operation/liquidation of the insolvent insurance companies in the care of the Receivership Division (investments, liquidation of assets, etc.) ◆ <u>Fire Marshal's Office Regulatory Fees</u> - The majority of the Fire Marshal's operating funds are derived from the department's general operating fund supplemented by various license and permit fees collected by the Fire Marshal's Office.
State Treasury	Generally, funds are deposited into the State Treasury. However, the department's Receivership Division maintains individual bank accounts for each insurance company, cemetery and funeral home in receivership.
Unused Funds	<ul style="list-style-type: none"> ◆ <u>Insurance Department Fund (Operating Fund)</u> – Any amounts not expended or encumbered in excess of 25% of the current fiscal year's appropriation is transferred to the state's General Fund. ◆ <u>Examiners Revolving Fund</u> – Unused funds are retained for the future use by the Insurance Examiners Division. ◆ <u>Service Contract Revolving Fund</u>- Unused funds are retained. ◆ <u>Receivership Division</u> – Balances in checking accounts for individual companies in receivership are

	<p>retained pursuant to court authority.</p> <p>♦ <u>Fire Marshal's Fund</u> – Unused funds are carried forward for the future use of the State Fire Marshal's Office.</p> <p><i>Code of Alabama 1975, Section 27-2-39</i></p>
--	---

SIGNIFICANT ITEMS

No new significant items.

STATUS OF PRIOR FINDINGS

1. PRIOR SUNSET SIGNIFICANT ITEM - National Regulation of Insurance May Threaten the State's Insurance Premium Tax – As stated in previous reports, the continuing threat of federal regulation of the insurance industry could be a direct threat to the premium tax collected from insurers, which provides a large percentage of the income of the General Fund. The following factors are driving an effort to bring about federal regulation.

- Increasingly, insurance companies domiciled in one state are doing business in multiple states and over the Internet, thereby complicating the efforts of individual states to properly regulate the companies that sell insurance to their residents. Currently, federal law places the responsibility for regulation of insurance on the individual states and exempts insurance activities from federal regulation.
- Efforts to coordinate the regulation of multi-state insurance companies by the various states have been addressed over the years by the National Association of Insurance Commissioners (NAIC). The NAIC provides a forum for the development of uniform policy when uniformity is appropriate. The NAIC also administers a national accreditation program for the states. In order to be accredited, the applicable insurance regulatory body must meet a set of minimum standards. NAIC also develops model laws for use by the various states. However, the efforts of NAIC relate only to the insurance industry and cannot compel any state's adoption of uniform laws. The federal General Accounting Office (GAO) has issued its report GAS-03-43 commending NAIC efforts, but identifying various dissimilarities between the states regarding regulation of insurance practices and citing a continuing need for common standards and improved coordination necessary to strengthen the regulation of the insurance market.
- The federal SMART Act, as currently written, would substantially and negatively impact the state's regulatory authority by preempting state laws.

- The federal Gramm-Leach-Bliley Financial Modernization Act of 1999 amended and/or repealed existing laws that previously separated the banking, insurance, and securities industries which were regulated by separate state agencies, and with varying degrees of accompanying federal regulation, leading to changes in the state and national regulation of entities that offer products in all three areas. The act further requires all states to remove restrictions placed on nonresidents, or face the establishment of a national regulator.

CURRENT STATUS: The SMART Act did not pass. The Nonadmitted and Reinsurance Reform Act of 2007, HR 1065 passed the House of Representatives on 6/25/07, but the Senate did not pass the bill. This bill would have regulated surplus line tax collection and interstate regulation of reinsurance. The Alabama Department of Insurance believes the bill would not have interfered with state regulation of insurance. The National Insurance Act of 2007, S40 is opposed by the Department. This bill provides for an optional federal charter for insurance companies whereby the insurance company could choose to be regulated by either the state or a federal agency, like banks and credit unions.

The Department of Insurance again submitted legislation to adopt the Interstate Insurance Product Regulation Compact during 2006 and 2007, but the legislation was not successful. During the 2006 Regular Session HB174, sponsored by Representative Buskey and the companion bill, SB228, sponsored by Senators Means, Butler, Roberts, Biddle, Ross, McClain, Smith, Dixon, Waggoner, French, Byrne, and Tanner failed to pass. During the 2007 Regular Session, HB146 sponsored by Representative Buskey failed to pass.

2. **PRIOR SUNSET SIGNIFICANT ITEM - The Department of Insurance is not Carrying Out its Duties to Determine Insurance Agents/Producers Criminal Histories, as Required by State Law and by the Insurance Fraud Prevention Act, Act 18 United States Code 1033, as Effectively as Possible.** In 1994, Congress enacted the Insurance Fraud Act to prohibit for life the participation in insurance business by certain felons, unless granted a written waiver from the licensing state's insurance regulatory agency. The Act further prohibits any entity involved in the insurance business from "willfully" permitting such participation by a convicted felon. The ACT also makes it a criminal offense to give false information to state insurance officials.

In addition to the federal law, state law provides the Commissioner of Insurance "shall not issue, continue, or permit to exist any agent, broker, solicitor, managing general agent, or service representative who is not "of good moral character and not have been convicted of a felony nor of any crime involving moral turpitude, unless fully pardoned with restoration of civil rights".

The Department previously utilized the National Crime Information Center (NCIC) terminal at the State Fire Marshal's Office to compare each new applicant criminal history with the application for licensure. In 1996, we reported that the Agents Licensing Division Director estimated that the Division received 1,300 applications per week for licensure, of which approximately 500 were first time applicants. Of the 500, approximately 37% were found to have provided false information or made an omission on their applications regarding criminal charges against them. According to department staff, the Alabama Criminal Justice Information Center later notified the Department that this use of the Fire Marshal's NCIC terminal was improper, and the Department ceased checking all first time applicants for licensure.

Currently, the Department is limiting its criminal history inquiries to applicants who voluntarily provide information of criminal convictions in their applications for licensure and to agents or employees for whom insurance companies have become aware and have reported to the Department of Insurance. When criminal histories are required, the applicant agent, or employee is required to furnish them. Where willing admission has been made, the applicant is advised that he or she is ineligible for licensing and is offered the option of requesting a waiver hearing.

Under these conditions, we conclude that there are potentially a large number of agents being licensed and continuing to be licensed who have not properly reported their criminal histories to the Department of Insurance, and that the Department is not as effective in monitoring the criminal backgrounds of its licensees as it should be.

CURRENT STATUS— The Department believes that with the Insurance Fraud Prevention Act, 18 U.S. Code 1033, the insurers are adequately screening applicants prior to submitting applications to the Department. The Department has a specific reference to the Federal Code on the license application. The Department is utilizing AlaCourt, an Internet database search program administered by the Administrative Office of Courts, to conduct a search of public records on all new and renewal resident applicants. The database has a history of all court cases in Alabama that resulted in either an acquittal or conviction. According to the Department of Insurance, less than 1% of the applicants applying for licensure have felony convictions according to AlaCourt. According to the department, six employees spend one hour each day in this effort. Although ten states are conducting preliminary background checks, the NAIC is not actively seeking legislation to require states to conduct background checks.

Because the background check through AlaCourt does not include convictions nationwide, we consider the check less effective than could reasonably be accomplished by the department.

3. **PRIOR SUNSET SIGNIFICANT ITEM - Insurance Fraud Unit Not in Place in Alabama and Three Other States**— The Department of Insurance has unsuccessfully submitted insurance fraud legislation since 1999 to provide for the crime of insurance fraud and specifically authorize the department to investigate suspected fraud and

provide civil and criminal penalties for violations. The insurance fraud bills introduced in the 2003 legislative session were sponsored by Representative Mike Hill (HB 271) and Senator Zeb Little 9SB 137).

CURRENT STATUS – Alabama is one of three states (Oregon and Virginia are the other two) without insurance fraud law. Insurance fraud bills were introduced in the 2006 and 2007 regular sessions – sponsored by Representative Hill (HB 627-2006RS and HB 333-2007RS) without success. The department has created an Insurance Fraud Division using funds from a court order. The division employs one attorney from the department’s Legal Division and two investigators. After a departmental reorganization in 2005, insurance consumer specialists were placed in the Insurance Fraud Unit. Alabama remains without a law to provide for the crime of insurance fraud and specifically authorize the department to investigate suspected fraud and provide civil and criminal penalties for violations.

4. **PRIOR SUNSET SIGNIFICANT ITEM - The Department Lacks Jurisdiction Over Third Party Administrators of Insurance Programs** – The Alabama Insurance Code provides for specific regulation of insurance companies, insurance agents and brokers, managing general agents, and adjusters. However, there is no provision providing specific regulation of “third party administrators”. Third party administrators are persons or organizations that directly or indirectly solicit or effect coverage or, underwrite, collect premiums, investigate claims, or settle claims with respect to life insurance, health insurance, or annuities. For example, Blue Cross/Blue Shield (BCBS) is the third party administrator for the State Employee’s Insurance Plan. The Department of Insurance has no authority over BCBS activities in this capacity because BCBS is hired by the State of Alabama to administer the plan, not to provide insurance directly. The United States Department of Labor, through the Office of Pension and Welfare Benefits, is responsible for administration and enforcement of self-funded insurance programs (The United States Code Title 29, Chapter 18, Employee Retirement Income Security Act of 1974).

CURRENT STATUS– The department has drafted legislation to be introduced in a future session.

5. **PRIOR SUNSET SIGNIFICANT ITEM - The Department Does Not Have Effective Authority to Properly Implement its Legally Required Program for Regulation of Service Contract Provider Agents** – According to department staff, Act 97-445, codified as *Code of Alabama 1975*, Sections 8-32-1 through 8-32-12, was established to regulate the operations of service contract providers; however, the statute has no provision for the registration/licensure of service contract provider representatives. Under current law, anyone can attempt to sell service contracts on anything to Alabama consumers. Since the Department is not authorized to register or license service contract provider agents, the Department does not have a good means of exercising regulation. Unsuccessful legislation was sponsored in the 2000 session by Representative Blain Galliher (HB 590) and Senator George Clay (SB 413) to remedy this condition.

CURRENT STATUS– The department has drafted legislation to be introduced in a future session.

6. **PRIOR SUNSET SIGNIFICANT ITEM - Implementation of the Alabama Pre need Funeral and Cemetery Act is Using More Departmental Resources than Originally Expected.** Act 2002-74, *Acts of Alabama 2002*, codified as the *Code of Alabama 1975*, Section 27-17A-1 through 27-17A-56 provides for the regulation of the sale of pre need funeral or cemetery merchandise and services. In attempting to implement the regulation of pre need funeral and cemetery service and product providers, the department has predominantly utilized the services of an attorney and a consumer specialist as well as several departmental insurance company financial examiners and, on a limited basis the one special investigator employed by the department. Department staff, in attempting to determine who needs regulation has discovered that there are approximately 462 funeral homes operating in Alabama as of July 1, 2005.

Funeral homes operating in Alabama are regulated by the Board of Funeral Service. The board has provided the Department of Insurance with a directory of its licensees, but had declined a request by the Department of Insurance to have board licensees identify themselves as either pre need or non-pre need providers on their annual renewal forms and to subsequently provide that information to the Department of Insurance. The Executive Secretary of the Board of Funeral Service stated at the board's October 2, 2003 sunset hearing that approximately 1/3 of the funeral home operators in Alabama have discontinued offering pre need services and products rather than comply with the requirements of the pre need Funeral and Cemetery Act, and that the board on the advice of legal counsel did not solicit the funeral home operator's status as a pre need provider on its renewal forms. The reason given for this position was that it was not the board's responsibility to administer statutes for which the Department of Insurance is responsible.

In attempting to identify cemeteries that might be subject to regulation under the Pre need Act, the Department learned that there is no central registry of cemeteries. Based on research at the Department of Archives & History, the Department of Public Health, and various courthouses, department staff estimated the number of cemeteries located in Alabama at approximately 43,000, many of which would be exempt from the Act. Cemeteries owned/operated by churches, governments, families, etc., are exempt from the Act's requirements.

The department is aware of third-party funeral need providers (casket sales by non funeral homes, florists selling flower arrangements, reception booklets, etc., as well as caskets). The number of these third party providers is as yet undetermined.

The department is also aware of Internet funeral need providers and is again unable at this time to determine the number of such service providers that should be regulated.

Department staff stated that initial examination of financial records at funeral homes has disclosed large variances among funeral homes in the nature and extent of records and cited occasional reluctance to grant access to the records.

CURRENT STATUS – According to the department’s staff, the department has experienced difficulty with its regulatory activities under the current law due to weaknesses in the law, the lack of funding, and the resistance of some in the industry to the law. The department stated that there are inconsistencies in the law and the law is vague regarding enforcement. According to some consumer groups, Alabama has one of the weakest laws in the nation (along with Florida and Hawaii). Below are some of the department’s stated major concerns with the law.

- **The concepts of pre-need funeral contracts and pre need cemetery contracts are treated differently.** The department’s position is that the law should treat the two as nearly alike as possible for ease of understanding, enhanced consumer protection, and for ease and consistency of enforcement. The law should strengthen consumer protection in both areas. The department states that cemeteries and funeral homes offer pre-need certificates to provide many of the same services and funeral merchandise and that the trust provisions for the certificates should therefore be the same.
- **The law does not require establishments to place in trust the monies received as contract payments until 30 days after the final payment is received.** Some contracts are paid in a single payment, but some contracts are paid in installments over several months, if not years. During that period, there is no trust “protection” for consumers who are making periodic payments. An operator selling several pre-need contracts will incur a large liability that the operator may not be able to meet with available funds when the contracts are finally paid out.
- **There is no funding mechanism in the law for regulatory functions.** The department does not have an adequate and dependable funding source to allow for more frequent examinations and investigative activities. The department is understaffed for the workload generated by pre-need sales/services. Currently there are four examiners assigned to perform pre-need examinations; one insurance consumer specialist II, and an Administrative Support Assistant II. Expenses (excluding payroll and other departmental costs) were \$156,199 in fiscal year 2007 (as of August 2007), and \$76,016 for fiscal year 2006. Expenses consist of upkeep for cemeteries; legal fees; travel; newspaper notices and miscellaneous expenses.
- **The law does not provide for a “guaranty fund” type arrangement intended to furnish some level of financial protection to pre-need contract buyers in the event an operator becomes insolvent.** The trust requirements are not sufficient. In the event of insolvency, pre-need money collected in advance is not there.

- **The law allows for receivership, an insolvency mechanism normally applied to insurance companies, but the receiver's options are limited.** The law limits the receiver of an insolvent company to liquidation or dissolution instead of rehabilitation (continuing operations while attempting to place the company on sound financial footing). While the companies are in receivership they cannot engage in pre-need sales. Liquidation or dissolution often results in little money to pay creditors or pre-need contract holders. As of August 2007, there were seventeen (17) funeral homes and cemeteries in receivership.
 - **There appear to be gaps in enforcement mechanisms available under the law.** Many of the enforcement sections only apply to establishments having a certificate of authority, not to establishments that have never applied for one or those that have let the certificates lapse. The criminal penalties (Class B misdemeanor) should be strengthened to classify some violations, particularly financial ones (willful failure to trust or divert trusted funds) as felonies.
 - **Although not strictly limited to pre-need, there should be legislation allowing for abandonment or transfer of cemeteries to local governments, with a corresponding obligation on local governments to maintain abandoned or transferred cemeteries.** Cemeteries are abandoned, and the state is responsible for maintaining them due to lack of clear records of ownership, and lack of a mechanism allowing the responsibility to be shifted.
7. **PRIOR FINDING – Unauthorized Permit and Fee for Weekly Testing of Fire Protection Sprinkler Systems** - The fire marshal is issuing a permit that is not authorized by law and is also collecting a fee not authorized by law. In administration of the state's Fire Protection Sprinkler Systems Act, codified in the *Code of Alabama 1975*, Title 34, Chapter 33, the fire marshal is provided with the authority to, "...set or make changes in the amount of the fee charged as necessary for the administration and enforcement of this chapter." The chapter then establishes the requirements for a certified fire sprinkler contractor for which the fee is to be charged. No other license or permit is mentioned in the law.

In addition to the fee for licensing a certified fire sprinkler contractor, **the fire marshal has improperly established a fee and an accompanying biennial permit for weekly testing of fire protection sprinkler systems.** The fire marshal created an application form for the permit and established a biennial fee of \$200 in its administrative rule 482-2-103; however, neither the law nor the department's administrative rules create the weekly testing permit for which the additional fee is charged or name the prerequisite conditions necessary to obtain it.

An Attorney General's opinion written to Randall C. Johnson, Director, Alabama Surface Mining Commission, dated June 23, 1987, A.G. No. 87-00222, stated that "where the Legislature established a sufficiently definite policy, standard or rule an administrative agency may be empowered to deal with the issuing of a license or permit and to fix reasonable fees for such issuance; where the Legislature has not

established such a sufficiently definite policy, rule or standard the administrative agency may not be empowered to deal with such issuing of licenses or permits or establishing of fees." "There must be a legislative basis to justify the application of a fee". Other Attorney General Opinions (80-181, 82-541, and 92-015) have held that administrative rules cannot be used to collect fees not specifically authorized by law.

Prior Recommendation - In administration of the Fire Protection Sprinkler Act, the fire marshal should issue no permit or license, except to a certified fire protection sprinkler contractor who meets all of the requirements of law. The fire marshal should not charge fees other than those specifically authorized by law in connection with the permitting of certified fire protection sprinkler contractors.

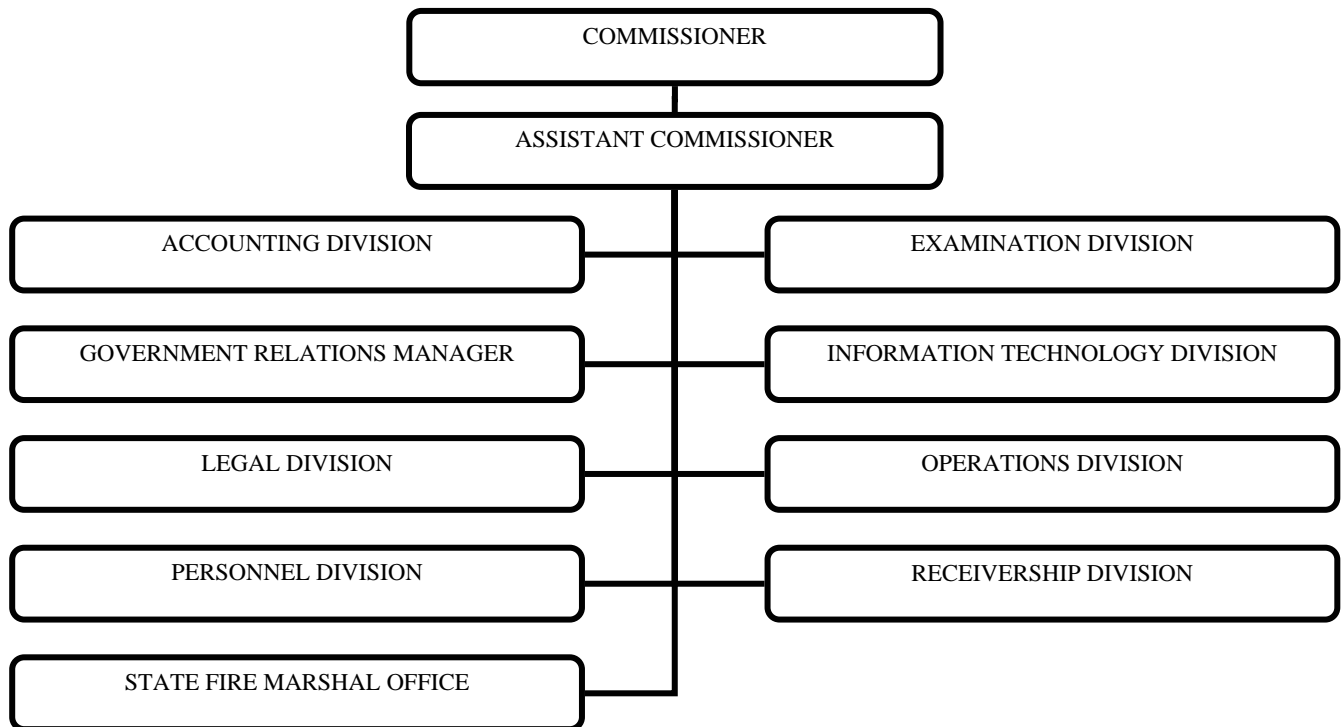
CURRENT STATUS - The Office no longer issues "Weekly Test Permits"; but the department's Rule 482-2-103.01 was not amended to delete the fee. Effective June 1, 2007, the office began issuing another certificate and charging another fee not authorized by law for an annual skilled worker exemption certificate for \$100 per worker (Rule 482-2-103.02). The certificate of exemption is issued to persons in lieu of the weekly test permits, which are also not authorized by law. Although the annual skilled worker certificate and fee are incorporated into the department's administrative rules, such rules cannot be used to enlarge upon the law.

8. **PRIOR FINDING – Improper Sprinkler Contractor Permit Fee** - There are apparently conflicting statutes regarding the fee to be charged to issue a fire protection sprinkler contractor permit. The *Code of Alabama 1975*, Section 34-33-2 states that, "The administration of this chapter is vested in the state fire marshal who shall have the power to set or make changes in the amount of the fee charged as necessary for the administration of this chapter." In apparent contradiction, Section 34-33-4 states that, "the applicant [for a fire protection sprinkler contractor permit] shall include a fee of \$100 when making the application." Both of these provisions have been in effect since Act 82-774 created the enabling statutes. Although Section 34-33-2 mentions only "the fee", there are actually two fees named in the statutes, an initial application fee and a renewal fee. The amount of the renewal fee is not set in the statutes. Since the application fee is set at \$100 by statute, only the renewal fee is at the discretion of the fire marshal

Prior Recommendation - The application fee to obtain a fire protection sprinkler system contractor permit should be \$100. A separate fee for renewal of the permit should be set by a formal administrative rule. The department should seek statutory changes through the legislature if this is not acceptable.

CURRENT STATUS- The situation continues to exist. The office continues to charge an improper fee of \$200 for the biennial sprinkler system contractor permit rather than the \$100 fee authorized by law.

ORGANIZATION



Accounting Division – Responsible for providing timely and accurate state financial services for the Department of Insurance. The Division accounts for receipts and disbursements associated with the general operations of the Department. The Division also prepares budgets; operations plan; processes payrolls; maintain property records; and purchases supplies and equipment.

Examination Division – Assists the Commissioner with the regulation of the solvency of insurance companies subject to Alabama insurance laws and regulations through the activities of surveillance, monitoring, analysis and examination. The Division examines the financial condition of domestic companies, HMOs and Fraternal Benefit Societies

Government Relations Manager – Acts as the liaison between the Department and the Legislature. Provides educational information for consumers and disseminates information to the media.

Information Technology Division – Assist the Commissioner in providing regulatory insurance oversight through on-line web based technology application. The Division procures and maintains computer hardware and software in accordance with the

prevailing standards established within the Department. The Division also provides technological infrastructure for networks in the Department.

Legal Division – The attorneys are assigned by the Attorney General. The Division handles legal matters for the Commissioner and the Department, holds hearings on producers and companies, and may hold civil or criminal proceedings.

Operations Division - The Operations Division is comprised of the following sections:

- **Consumer Services** – Receives, researches, investigates and resolves individual consumer complaints against insurance companies, agents and brokers. Provides educational materials and assistance for consumers and senior citizens regarding insurance questions and coverage provisions.
- **Producer Licensing** – Administers the applicable statutes and regulations governing the initial and continued licensing licensure of all resident and nonresident applicants.
- **Rates and Forms** – Enforces Alabama Insurance statutes, regulations, and bulletins pertaining to insurance companies, producers, adjusters, and other licensed entities. Assists consumers with regard to their rating and underwriting complaints, and responds and deploys staff members to disaster sites to assist victims.
- **Pre Need** – Regulates the sale of pre need cemetery and funeral merchandise and services. Audits funeral homes and cemeteries pre need contracts for legal requirements.

Personnel Division – Provides services related to staffing, performance, leave, classification, training, and employee relations. Responsible for meeting the human resource needs of the employees, supervisors, applicants, and customers.

Receivership Division –Responsible for managing or liquidating financially impaired or insolvent insurance companies and liquidation or dissolution of insolvent cemeteries and funeral establishments. When the Commissioner of Insurance institutes delinquency proceedings against any insurer domiciled in Alabama, the circuit court appoints the Chief of the Receivership Division as receiver of the insurer. The Receiver attempts to reorganize the financial affairs of the insurer, and the regular insurance operations may or may not be suspended. If the insurer cannot be rehabilitated, the Receiver will suspend all insurance operations that can be stopped and will liquidate the assets of the failed insurer in accordance with the court's direction.

According to information presented on the department's Internet website on October 13, 2007 and information from the Receivership Division, there are 12 insurance companies and 4 pre-need cemetery/funeral establishments in receivership. Two insurance companies operate under supervision of the Receivership Division, one is

under direct management of the Receivership Division (rehabilitation), and eight are in liquidation. One cemetery/funeral home is in rehabilitation, and nineteen cemeteries and four funeral homes are in liquidation.

Fire Marshal's Office – Investigates suspicious fires and explosions; inspects buildings for proper fire code, and conducts fire education conferences and training seminars. The Fire Marshal's Office also regulates and permits the sale of fireworks, fire sprinkler contractors and installers, blasting contractors and blasters.

PERSONNEL

The Department of Insurance currently employs one hundred forty seven (147) employees, consisting of two merit system exempt employees (Commissioner and Receivership Division Chief); two merit system unclassified employees (Assistant Commissioner and Deputy Attorney General); and one hundred forty three classified merit system employees (As of August 1, 2007).

Schedule of Employees

Classification	Race/Gender					Total
	Black Female	White Female	Black Male	White Male	Asian Male	
Commissioner			1			1
Assistant Commissioner				1		1
Deputy Commissioner		1				1
Receivership Division Chief				1		1
Deputy Attorney General			1			1
Clerk		3				3
Laborer		1				1
Administrative Support Assistant I		3				3
Administrative Support Assistant II	6	1	1			8
Administrative Support Assistant III	10	4		1		15
IT Operations Technician	1					1
Programmer	1	1	1	1		4
Programmer Analyst, Associate		1				1
Programmer Analyst		1				1
IT Systems Technician			1			1
IT Systems Technician, Sr.		1	1			2
IT Systems Specialist, Associate		1				1
IT Systems Specialist			1			1
IT Manager I			1			1
Account Clerk	1	3				4
State Professional Trainee				1		1
Accounting Manager	1					1
(continued)						

(continued)	Black Female	White Female	Black Male	White Male	Asian Male	
Staff Accountant	1					1
Senior Accountant		3				3
Personnel Assistant III	1					1
Personnel Manager	1					1
Departmental. Procurement Officer I				1		1
Actuary				1		1
Insurance Consumer Complaint Spec. I		1				1
Insurance Consumer Complaint Spec. II	1	2	2	3		8
Insurance Licensing Supervisor				1		1
Insurance Rate Analyst		2				2
Insurance Rate Analyst II				3		3
Insurance Rate Manager		1				1
Insurance Examiner I	3	1	1	5		10
Insurance Examiner II	3	3	1	4		11
Insurance Examiner III		4		2	1	7
Insurance Examination Manager				1		1
Insurance Examination Supervisor	1			2		3
Sec/Insurance Registration Manager				1		1
Legal Research Assistant		1				1
Attorney I/II			1			1
Attorney III		2		2		4
Attorney IV				1		1
Governmental Relations Manager				1		1
Special Investigator				2		2
Deputy State Fire Marshal			1	23		24
Assistant State Fire Marshal				1		1
State Fire Marshal				1		1
Total	31	40	14	61	1	147

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee

Insurance (119 Employees).....794

Fire Marshal (28 Employees).....62

Total Operating Expenditures per Licensee (2006-07 fiscal year)- \$ 135.95

Number of Insurance Agent/Broker/etc. in Alabama and Surrounding States

	Alabama	Florida	Georgia	Mississippi	Tennessee
Population	4,599,030	18,089,888	9,363,941	2,910,540	6,038,803
Insurance Co,	1,971				
Producer/Agents	80,143	943,961	286,290	117,755	250,834
Producer Appts**	1,291,581		N/P		
Service Reps	730	80,896	N/P	N/P	N/P
Service Reps Appts**	5,217	N/P	N/P	N/P	N/P
Prepaid Dental	4	N/P	N/P	N/P	N/P
Prepaid Legal	2	N/P	N/P	N/P	N/P
Motor Club	3,545	N/P	N/P	N/P	N/P
Credit Only	15,856	N/P	N/P	N/P	N/P
Business Entity	4,864	28,668	12,545	6,623	3,901
Mngng Gen Agnt	29	N/P		N/P	N/P
Surplus Ln Broker	1,024	649	1,704	N/P	N/P
Adjuster	5,366	104,342	12,049	88	N/P
Surplus Ln Broker Business Entity	213	N/P	N/P	N/P	N/P
Pre-need Sales Agt	409	N/P	N/P	N/P	N/P
Pre-need Appts***	2,049	N/P	N/P	N/P	N/P

** Individual producers/service representatives are appointed to multiple companies.

***Pre-need providers and individual pre-need sales representatives.

N/P – Not Provided

Notification to Licensees of Department Decisions to Amend Administrative Rules

The Department of Insurance is partially exempt from the requirements of the Administrative Procedure Act. The Department is bound by the notice requirements of the Act for proposed administrative rules, and the department files copies of its rules with the Administrative Procedure Division of the Legislative Reference Service for inclusion in the state's Administrative Code. Notices of proposed rules are also posted on the department's Internet website. The department also publishes notices of proposed rules in newspapers of general circulation.

Complaints

The *Code of Alabama 1975*, Section 27-7-37 describes the procedures for documentation, receipt, and investigation of complaints relating to the Department of Insurance licensees.

Initial Documentation	<p>Consumer complaints are received in the Consumer/Fraud Division of the Alabama Insurance Department. Complaints may be submitted via email, fax, letter, phone, or by using a complaint form found on the department's website. Complainants may also report suspected arson online on the Fire Marshal's Office website.</p> <p>During catastrophes, consumer specialists are onsite to directly assist consumers with complaints. The Department has also developed a system called "e-storm" for handling complaints related to catastrophes such as hurricanes and tornadoes. The system provides a quick and efficient means of communicating with the insurers regarding specific consumer complaints. The department can electronically track the progress of the complaint.</p> <p>If consumers are not satisfied with the insurer's handling of storm claims, the consumer may request further review through the department's mediation program.</p>
Receipt of Completed Complaint	<p>The complaint is assigned to a consumer specialist and logged into the computerized licensing/tracking system (AIIMS). If the complaint pertains to a company procedure, such as handling of a claim, the specialist will notify the company of the complaint and request a response within a certain number of days. The consumer is also notified that the Department has received the complaint. The complaint may be resolved very quickly or may become a lengthy process, depending on the circumstances and the position of the company.</p>

Investigation	<p>Some complaints may indicate violations of insurance laws/regulations which will require confidential investigations. Complaint specialist may investigate complaints or complaints are investigated by the department's special investigators. Investigations that lead to administrative and/or court actions against insurance producers and companies are referred to the department's Legal Division.</p>
Formal Hearing	<p>If the investigation reveals that probable cause exist to revoke or suspend a license the licensee is notified by certified mail of the charges. The licensee has 30 days to respond to the complaint in writing. After receiving the licensee's response, an administrative hearing is scheduled and held before the commissioner or a deputy appointed by the commission. The commissioner or his deputy presides over the hearing and will make a written finding of the facts.</p>
Resolution of Complaint	<p>Within 30 days after the conclusion of the hearing, the commissioner will make a ruling disposing of the complaint and a copy of the ruling is mailed to the complainant, the licensee and all interested parties represented by the licensee. The commissioner may issue a cease and desist order; revoke or suspend a license; or refer the case to the courts for criminal prosecution.</p>

Complaint Resolution

The department, as part of its licensing system, tracks complaints. The following information was obtained from data compiled by consumer specialists working in the Life & Health and Property & Casualty Divisions.

Schedule of Complaints - Insurance Department

(Does not include cases not yet closed)

Coverage Type	2006		2007*	
	Number of Complaints	Average # of Days to Close	Number of Complaints	Average # of Days to Close
Accident & Health	694	37	350	46
Auto	789	27	450	32
Fire, Allied Lines & CMP	76	40	35	13
Homeowners	2,755	29	675	29
Liability	67	26	29	66
Life & Annuity	530	40	183	47
Miscellaneous	1,764	30	943	42
Total	6,675	32	2,665	39

*Through June 30, 2007

Schedule of Complaints – Pre-Need Division

(Does not include cases not yet closed)

	Complaints Received	Average # of Days to Close
2006	14	23
2007	5	34

Fire Marshal's Office - Investigations

Includes all Categories of Complaints against Licensees and of Suspected Arson

Year	Complaints Received	Closed	Pending(1)
2006	887	256	631
2007	559	121	438

(1) According to the State Fire Marshal, prosecution of arson carries no statute of limitations in Alabama. Files are subject to closure only when the specific cause of the fire or explosion is determined to have been accidental or arson with subsequent arrest and charges resolved by the courts. In the event the cause cannot be determined or arson is determined but an arrest is not made, the case is either open and actively worked or placed in an inactive status pending additional information.

Anonymous Complaints

According to the Deputy Commissioner, anonymous complaints are received but are not acted upon unless sufficient independently verifiable information is provided. The Fire Marshal's Office accepts anonymous complaints where enough information is provided to merit an investigation. The Fire Marshal's Office has an arson reporting hotline devoted to receiving information related to fires.

SMART BUDGETING

Acts of Alabama, 2004-50 (HJR89) states, "That all state agencies and entities receiving legislative appropriations are requested to submit to the Joint Legislative Budget Committee budget proposals in performance based budget language and form. This request is applicable for proposals for the 2005-2006 fiscal year to be submitted to the 2005 Regular Session and for each succeeding fiscal year. The Director of Finance is requested to inform each public agency or entity of our desires concerning this matter."

To comply with this request, the Director of Finance implemented a system of budgeting that requires each agency to report its performance, the system to be named SMART, an acronym for Specific, Measurable, Accountable, Responsive, Transparent.

As a part of the SMART Budgeting system, each agency is required to submit its goals and objectives to the Department of Finance – the goals to be stated as long-term, multiyear targets which are to be achieved through accomplishment of stated objectives, which are single-year targets. In order to report progress, the goals and objectives must necessarily be designed so that the agency can measure annual progress toward their achievement. The SMART Budgeting system includes an Operations Plan and a Quarterly Performance Report. The performance report presents information on achievement of an agency's annual objectives, and its SMART Budgeting report that presents performance information. If an agency has not included at least one objective for each goal, performance relative to that goal will not be reported. For the 2006 fiscal year, each licensing/regulatory agency was required to have at least one goal and one or more objectives directly related to the goal. Additional annual objectives were allowed without corresponding goals.

Among agencies that were not accustomed to reporting performance, we found confusion as to how to design the goals and objectives and how to differentiate between goals and objectives. Routinely we found goals with no directly related objectives. Both goals and objectives were often too abstract to be measurable, and progress toward their achievement could not be meaningfully reported. The Department of Finance is aware of these deficiencies and is taking remedial steps.

In these respects, the Department of Insurance was no exception. Some goals were not accompanied by directly related objectives. Some goals and objectives were abstract, and progress toward their achievement could therefore not be measured and reported. Goals and projected performance for the year are presented on the Operations Plan. Projected

and actual performance toward achievement of objectives for the year is presented on the Performance Report.

The department's performance goals and objectives for the 2006 and 2007 fiscal years and the examiner's comments are presented in the following table. The department's goals and objectives for the 2007 fiscal year identical goals and objectives presented on the Operations Plan and the Quarterly Performance reports for fiscal year 2006.

2006 GOALS	COMMENTS
1. Efficient regulation of all facets of insurance	The goal is too broad. There is no long-term performance target from which to determine when the goal is reached. There are related annual objectives. (See objectives # 1, 2, and 3).
2. Safeguard/enhance tax revenue	The goal is too broad. There is no measurable performance target. There is no accompanying annual objective. Consequently, progress toward achievement of this goal is not reported.
3. Maintain accreditation by NAIC	The goal should be an annual objective, as well as a goal. However, there is no accompanying annual objective. Consequently, progress toward achievement of this goal is not reported.
4. Manage insurance crises effectively	No measurable performance target from which to determine when the goal is achieved. There is no accompanying annual objective to show progress. Consequently, progress toward achievement of this goal is not reported.
5. Prevent loss of life and property through fire safety	The goal as stated is not measurable. There is no performance target from which to determine when the goal is achieved. There is a related annual objective. (See objective #4).

2006 OBJECTIVES	REPORTED	COMMENTS
1. Maintain cost to generate \$1 of revenue to General Fund, Education Trust Fund, Mental Health Fund, and Insurance Department Fund at or below \$0.06.	\$0.05	The objective appears appropriate.
2. Maintain costs of regulation at or below \$1 per \$1,000 of premiums written.	\$0.82	The objective appears appropriate.

3. Process rate and form filings within 30 days of receipt.	12 days	The objective appears appropriate.
4. Perform fire safety inspection within 30 days of request.	27 days	The objective appears appropriate.

2007 GOALS	COMMENTS
1. Efficient regulation of all facets of insurance	The goal is too broad. There is no long-term performance target from which to determine when the goal is reached. There are related annual objectives. (See objectives # 1, 2, and 3).
2. Safeguard/enhance tax revenue	The goal is too broad. There is no measurable performance target. There is no accompanying annual objective. Consequently, progress toward achievement of this goal is not reported.
3. Maintain accreditation by NAIC	The goal should be an annual objective, as well as a goal. However, there is no accompanying annual objective. Consequently, performance related to achievement of this goal is not reported.
4. Manage insurance crises effectively	No measurable performance target from which to determine when the goal is achieved. There is no accompanying annual objective to show progress. Consequently, progress toward achievement of this goal is not reported.
5. Prevent loss of life and property through fire safety	The goal as stated is not measurable. There is no performance target from which to determine when the goal is achieved. There is a related annual objective. (See objective #4).

2007 OBJECTIVES	COMMENTS
1. Maintain cost to generate \$1 of revenue to General Fund, Education Trust Fund, Mental Health Fund, and Insurance Department Fund at or below \$0.06.	The objective appears appropriate.
2. Maintain costs of regulation at or below \$1 per \$1,000 of premiums written.	The objective appears appropriate.

3. Process life and health rate and form filings within 20 days of receipt.	The objective appears appropriate.
4. Process property and casualty rate and form filings within 20 days of receipt.	The objective appears appropriate.
5. Perform fire safety inspection within 30 days of request.	The objective appears appropriate.

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

The Department of Insurance licenses pre-need sales agents and the sale of pre-need funeral and cemetery merchandise. Funeral establishments, which engage in pre-need sales, are licensed and regulated by the Board of Funeral Service.

FINANCIAL INFORMATION

Operating Funds/Accounts

The department operated from the following accounts and funds:

- **Fund 341** – **The Special Examination Revolving Fund** authorized by the *Code of Alabama 1975, Section 27-2-25(b)*. This fund **maintained in the State Treasury** accounts for the receipts and disbursements associated with the operations of Insurance Examiners Division and some expenses associated with the administration of insolvent insurers placed under the control of the Receivership Division. Receipts for this fund include:
 - Fees charged for statutorily required financial examinations,
 - Audits of quarterly and annual financial statements of insurance companies authorized to conduct business in Alabama, and
 - Other amounts recovered from the assets of the insolvent insurers for reimbursement of departmental expenses incurred in administering the receivership estates.

The unexpended balance in fund 341 at the end of the fiscal year remains in the fund for subsequent appropriation and expenditure.

- **Fund 342** – **The State Fire Marshal's Fund** – authorized by the *Code of Alabama 1975, Section 8-17-255*. This fund **maintained in the State Treasury** accounts for some receipts and disbursements associated with the operations of

the State Fire Marshal's Office. Receipts are derived from fees charged for application for and issuance of firework permits, fire protection sprinkler system installer permits, and licenses for commercial users of explosives (blasting contractors). The unexpended balance in this fund at the end of the fiscal year remains in the fund for subsequent appropriation and expenditure.

- **Fund 921** – **The Department of Insurance Fund** – authorized by the *Code of Alabama 1975, Section 27-2-39*. This fund maintained in the State Treasury accounts for receipts and disbursements associated with the general operations of the department, including portions of the State Fire Marshal's Office. Receipts for this fund are comprised of 50 percent of various licensing fees retained for operations. The remaining 50 percent is deposited directly into the state's General Fund and is not available for use by the department. The unencumbered and unexpended balance at the end of the fiscal year in excess of 25 percent of the amount appropriated for that fiscal year must be transferred to the General Fund.
- **Fund 934** – **The Service Contract Revolving Fund** – authorized by the *Code of Alabama 1975, Section 8-32-3*. This fund maintained in the State Treasury accounts for the receipts associated with fees collected from the special revolving fund set up by the State Treasurer. Each provider of service contracts sold in this state is required to file a registration with the commissioner on a form prescribed by the commissioner. Each provider is required to pay the commissioner a fee in the amount of \$200 annually. The unexpended balance in fund 934 at the end of the fiscal year remains in the fund for subsequent appropriation and expenditure.
- **Individual Checking and Investment Accounts** - In addition to funds maintained in the State Treasury, the Receivership Division Chief controls individual checking and investment accounts reserved for each insurance company estate in receivership.

Collection of Premium Tax

The department collects and distributes an insurance premium tax from companies authorized to transact insurance business in Alabama, as provided by the *Code of Alabama 1975*, Sections 27-4A-1 through 7. The most recently published Comprehensive Annual Financial Report (CAFR) for the State of Alabama (2006 fiscal year), reports that premium taxes account for 20.75% of the total taxes deposited to the General Fund. No part of the premium tax is available for use by the Department of Insurance.

Type Insurer Paying Premium Tax	% of Premium Tax Deposited to:		
	General Fund	*Education Trust Fund	*Mental Health Trust Fund
Health Maintenance Organizations	100	N/A	N/A
Domestic Life Insurers	50	50	N/A
All Other Domestic Life Insurers	25	50	N/A
Foreign Life Insurers	100	N/A	N/A
Foreign Property Insurers	62.5	37.5	N/A
All Other Foreign Insurers	75	25	N/A
**Nonprofit Corporations	N/A	N/A	100

* The amounts distributed to the Education Trust Fund and Mental Health Trust Funds are capped at the amount distributed in the 1992 fiscal year. Any excess is distributed to the General Fund.

** Organized pursuant to the *Code of Alabama 1975*, Sections 10-4-100 through 10-4-115.

Distribution of Premium Taxes for the 2003, 2004, 2005 & 2006 Fiscal Years				
	2003-04	2004-05	2005-06	2006-07
General Fund	\$203,751,364	\$234,829,494	\$235,634,033	\$239,214,464
Education Trust Fund	\$30,993,296	\$30,993,296	\$30,993,296	\$30,993,296
Mental Health Trust Fund	\$4,525,338	\$4,525,338	\$4,525,338	\$4,525,338
Total	\$239,269,998	\$270,348,128	\$271,152,667	\$274,733,098

In addition to collecting and distributing the premium tax, the department collects other fees that are distributed by law in whole or in part to the State's General Fund. Distributions of these fees to the General Fund are as follows:

Additional Collections Deposited into the General Fund

2003-04	2004-05	2005-06	2006-07
\$4,409,434	\$4,663,377	\$5,063,258	\$5,677,966

Fee Schedule

Fee Amount	Type Fee/Fine	Code of Alabama 1975
	Fireworks	
\$ 2,000.00	Manufacturer's Fireworks Permit	8-17-211(e)(1)
\$ 2,000.00	Distributor's Fireworks Permit	8-17-211(e)(2)
\$ 700.00	Wholesaler's Fireworks Permit	8-17-211(e)(3)
\$ 200.00	Retailer's Fireworks Permit	8-17-211(e)(4)
\$ 200.00	Seasonal Fireworks Permit	8-17-211(e)(5)
\$ 100.00	Seasonal Fireworks Permit (After July 10)	8-17-211(e)(6)
\$ 50.00	Fireworks Display Permit	8-17-211(e)(7)
	Commercial Use of Explosives	
\$ 100.00	Blaster Certification	8-17-243(d)
\$ 2,000.00	Blasting Contractor License	8-17-247(c)
\$ 50.00	Variation Request for Blasting Fees	8-17-250(b)
\$ 500.00	Penalty for each Violation Blasting Statutes/Rules/Regulations	8-17-253
	Fire Sprinkler Installer	
\$ 200.00	Fire Sprinkler Installer Permit	34-33-4
\$ 200.00	Biennial fee for Weekly Test Permit	Not in the law
\$ 100.00	Skilled Employee Exemption	Not in the law
<u>Insurance Fees</u>		
	Service Contract Provider	
\$ 200.00	Service Contract Provider Fee (Annual Fee)	8-32-3(c)
\$ 40.00	Service Contract Provider Form Filing Fee	8-32-10
\$ 500.00 to \$ 10,000.00	Civil Penalty of \$500.00 per violation but no more than \$10,000.00 in aggregate for violations of the same nature	8-32-10(f)
	Dental Service Plans	
\$ 1,005.00	Dental Service Plan Initial Admission	22-21-374 also 27-4- 2(a)(1) a. & b. & (12)b
\$ 505.00	Dental Service Plan Renewal	22-21-374 also 27-4- 2(a)(1) a. & b. & (12)b
\$ 25.00	Dental Service Plan Annual Statement Filing Fee	22-21-374 also 27-4- 2(a)(4)
	Financial and Market Conduct Examinations	
\$ 100.00	Foreign Audit – Authority to Collect	27-2-21
Various	Time and Travel Expenses for Actuaries Conducting Audit	27-2-21(a); 27-2-25(a)

Various	Time and Travel Expenses for Examiners Conducting Audit	27-2-21(a); 27-2-25(a)
\$ 175.00	Examination Fee Annual Statement- Mutual Aid Assoc., Fraternal Benefit Societies HMO	27-2-25 (*3)
\$ 750.00	Examination Fee Annual Statement- All other Insurers, Including Health Care Service Plans	27-2-25 (*3)
\$ 1,000.00	Examination Fee Annual Statement- Application for Original Certificate of Authority	27-2-25 (*3)
\$ 40.00	Form Filings	27-2-25 (*1)
\$ 100.00	Form Filings – Risk Retention Groups	27-2-25 (*1)
\$ 100.00	Form Filings – Purchasing Groups	27-2-25 (*1)
	(1*) Bulletin Dated November 1, 1994 POLICY AND BILLING POCEDURES	
	(2*) Bulletin Dated August 12, 1998 AUDIT AND EXAMINATION FEES FOR: - ANNUAL FINANCIAL STATEMENT – APPLICATION FOR ORIGINAL CERTIFICATE OF AUTHORITY – FOREIGN EXAMINATION REPORTS	
	Receivership	
Various	Receivership Expenses Billed at Actual Cost	27-2-52
	Retaliatory Tax/Fees	
Various	Retaliatory Tax on License, Fees, Taxes, Fines, Penalties or Deposits Placed Upon Alabamians Doing Business	27-3-29
	Insurance Companies/Sales & Service Personnel	
\$ 500.00	Initial Application for Certificates of Authority (COA)	27-4-2(a)(1)a
\$ 500.00	Issue Original COA	27-4-2(a)(1)b
\$ 500.00	Renewal Fee for COA	27-4-2(a)(1)c
\$ 500.00	Reinstatement Fee COA	27-4-2(a)(1)d
\$ 25.00	Charter Documents or Amendments	27-4-2(a)(2)
\$ 250.00	Solicitation Permit, Application and Issuance	27-4-2(a)(3)
\$ 25.00	Annual Statement – Filing Fee – Renewal	27-4-2(a)(4)
\$ 20.00	Application Fee – Initial – Individual Producer License – Resident	27-4-2(a)(5)a1
\$ 20.00	Initial Application for Individual Producer License – Nonresident	27-4-2(a)(5)a1
\$ 40.00	Issuance of Original Individual Producer License – Resident	27-4-2(a)(5)a2
\$ 40.00	Issuance of Original Individual Producer License – Nonresident	27-4-2(a)(5)a2

\$	20.00	Initial Application Producer Business Entity – Resident	27-4-2(a)(5)b1
\$	20.00	Initial Application Producer Business Entity - Nonresident	27-4-2(a)(5)b1
\$	100.00	Original Producer Business Entity License – Resident	27-4-2(a)(5)b2
\$	100.00	Original Producer Business Entity License – Nonresident	27-4-2(a)(5)b2
\$	50.00	Renewal Producer Business Entity License – Resident/Nonresident	27-4-2(a)(5)b2
\$	30.00	Examination Fee (Producer Examination or Reexamination, Each Classification of Examination)	27-4-2(a)(5)c
\$	30.00	Producer Appointment – Filing Notice of Appointment	27-4-2(a)(6)a
\$	10.00	Producer Appointment – Annual Continuation of Appointment	27-4-2(a)(6)b
\$	30.00	Reinsurance Intermediary – Filing Application for License	27-4-2(a)(7)a
\$	140.00	Reinsurance Intermediary – Issuance of Initial License	27-4-2(a)(7)b
\$	100.00	Reinsurance Intermediary – Annual Continuation of License	27-4-2(a)(7)c
\$	30.00	Managing General Agent’s Application for Initial License	27-4-2(a)(8)a
\$	125.00	Managing General Agent’s Issuance of License (MGA)	27-4-2(a)(8)b
\$	75.00	Managing General Agent’s Annual Continuation of License	27-4-2(a)(8)c
\$	20.00	Service Representative’s Application for Initial License	27-4-2(a)(9)a
\$	30.00	Service Representative’s Appointment Fee, P & C	27-4-2(a)(9)b
\$	30.00	Service Representative’s Appointment Renewal, P & C	27-4-2(a)(9)b
\$	50.00	Surplus Line Broker’s Application for Initial License	27-4-2(a)(10)a
\$	200.00	Surplus Line Broker – Individual License Fee	27-4-2(a)(10)b1
\$	200.00	Surplus Line Broker – Individual License Fee – Renewal	27-4-2(a)(10)b1
\$ 500.00 + .50 each product		Surplus Line Broker – Business Entity License Fee	27-4-2(a)(10)b2
\$ 500.00 + .50 each product		Surplus Line Broker – Business Entity License Fee – Renewal	27-4-2(a)(10)b2
\$	20.00	Adjuster’s License – Initial Application Fee	27-4-2(a)(11)a
\$	80.00	Adjuster’s License – Initial License	27-4-2(a)(11)b
\$	80.00	Adjuster’s License – Biennial Renewal	27-4-2(a)(11)b
Variable		Fine for Violation of P & C Laws	27-7-4(a)
Rental Insurance			
\$	20.00	Rental Insurance Application – Agent or Company	27-7-5.1/27-4-2(a)
\$	40.00	Rental Agent License Renewal Biennial	27-7-5.1/27-4-2(a)5a1

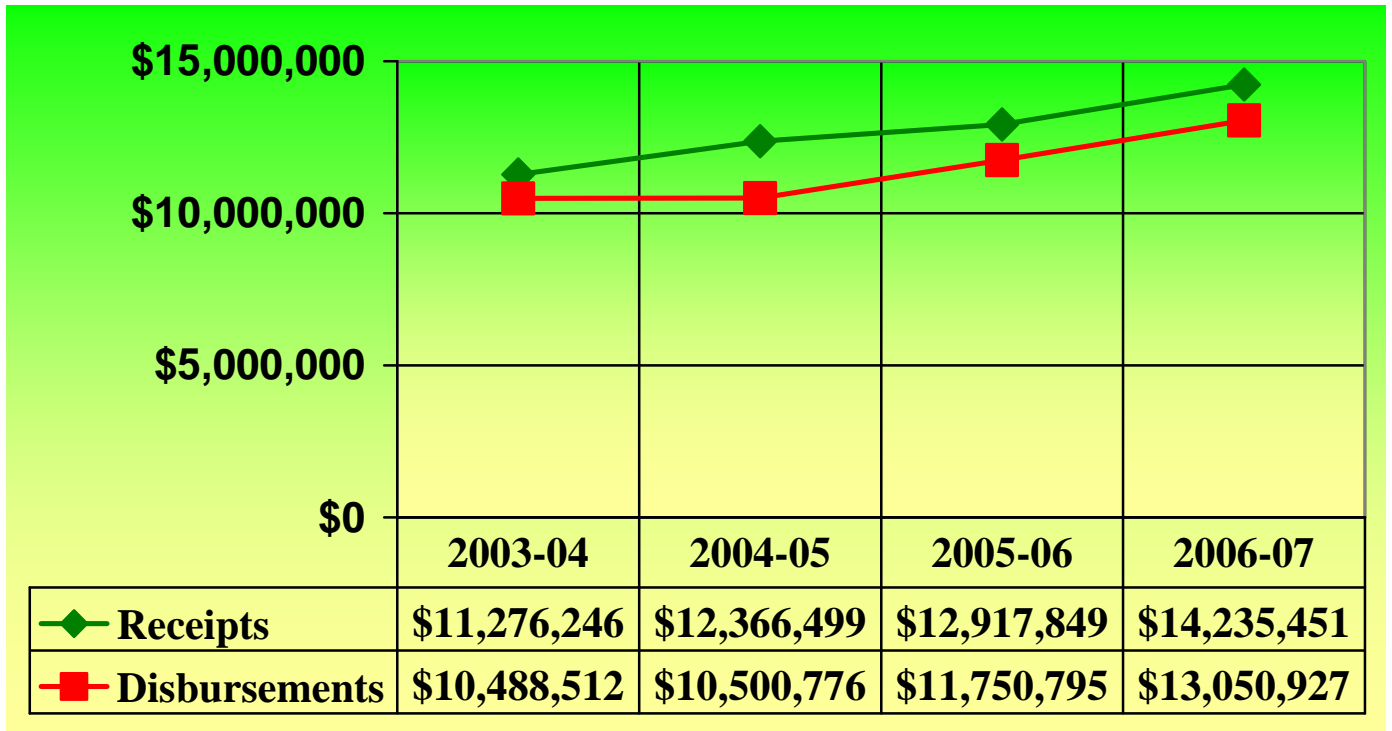
\$	50.00	Rental Company or Agent License Renewal Late Fee	27-7-5.1/27-4-2(a)
\$	10.00	Rental Company Appointment Renewal	27-7-5.1/27-4-2(a)
		Continuing Education	
\$	20.00	License Renewal By Producer and Service Representative	27-8A-9-(a)(1)
\$	50.00	Late Filing Fee for Each Producer or Service Rep Failing to Make a Timely Filing of The Compliance Form	27-8A-9-(a)(2)
\$	300.00	One-Time Provider Authority Original Filing Fee	27-8A-9-(a)(3)
\$	100.00	Provider Annual Renewal Fee	27-8A-9-(a)(4)
\$	50.00	Course Approval Filing Fee for Each Course	27-8A-9-(a)(5)
		Rating Organizations	
\$	25.00	Licensing of Rating Organizations – Fire, etc., Inland Marine	27-13-24
	Various	Fine for Violation of Rating Laws – Fire, Marine	27-13-45
\$	25.00	Licensing of Rating Organizations – Casualty and Surety Insurance	27-13-62
	Various	Fine for Violation of Rating Laws – Casualty & Surety	27-13-83
		Preneed Funeral & Cemetery Sales & Service	
\$	150.00	Application for Preneed Certificate of Authority	27-17A-11-(d)(1)
\$	75.00	Annual Renewal for Preneed Certificate of Authority	27-17A-11-(d)(1)
\$	150.00	Application for Preneed Branch Certificate of Authority	27-17A-11-(d)(2)
\$	150.00	Annual Renewal for Branch Preneed Certificate of Authority	27-17A-11-(d)(2)
\$	50.00 per day	Fine for Failure to File Annual Statement	27-17A-11-(h)
\$	50.00 per day	Fine for Failure to File Statements of Activities of Trust for Preneed Certificate Holders	27-17A-11-(h)
\$	100.00	Transfer of Certificate of Authority for Preneed	27-17A-11-(j)
\$	25.00	Application for Preneed Sales Agent	27-17A-18(g)
\$	25.00	Renewal for Preneed Sales Agent	27-17A-18-(j)
\$ 1,000.00 per violation		Penalty for Failure to Comply with a Subpoena or Order Directing Discovery	27-17A-20-(c)
\$ 1,000.00 per violation		Fine for Non-willful Violation of Discretionary Suspension or Revocation of a Certificate of Authority	27-17A-21-(a)
\$ 10,000.00 per violation		Fine for Willful Violation of Discretionary Suspension or Revocation of a Certificate of Authority	27-17A-20-(c)

	Health Maintenance Organizations (HMO)	
\$ 50.00	HMO – Application for Certificate of Authority or Amendment	27-21A-21(1)
\$ 10.00	HMO – Filing Amendment to Organizational Documents	27-21A-21(2)
\$ 20.00	HMO – Filing Annual Report	27-21A-21(3)
\$ 200.00	HMO – Renewal for Certificates of Authority	27-21A-21(4)
	Bulk Reinsurance	
\$ 500.00	Bulk Reinsurance Filing Fee	27-27-47
	Fraternal Benefit Society	
\$ 50.00	Fraternal Benefit Society – License	27-34-6
\$ 50.00	Fraternal Benefit Society - Renewal	27-34-6
\$ 10.00	Fraternal Benefit Society – Filing of Annual Statement	27-34-36
\$ 2.00	Fraternal Benefit Society – Filing for Service of Process Upon Commissioner	27-34-47
	Motor Club	
\$ 250.00	Motor Club License Fee – Annual or Renewal	27-39-6
\$ ≤500.00	Fine for Violation of Provisions of this Chapter Upon Conviction	27-39-8
	Premium Finance Company	
\$ 200.00	Annual License Fee – Premium Finance Company	27-40-3(a)
\$ 50.00	Annual License Fee for Agency Financing Own Premiums of Less than \$150,000.00 Annually	27-40-3(a)
\$ 1,000.00	Fine for not Obtaining a License as Premium Finance Company	27-40-3(a)

Schedule of Cash Receipts, Disbursements and Balances
October 1, 2003 through September 30, 2007

	2006-07	2005-06	2004-05	2003-04
<u>Receipts</u>	<u>\$14,235,450.72</u>	<u>\$12,917,848.79</u>	<u>\$12,366,499.23</u>	<u>\$11,276,245.75</u>
<u>Disbursements</u>				
Personnel Costs	6,620,122.13	5,907,417.50	5,503,554.83	5,726,780.86
Employee Benefits	2,281,571.15	1,879,213.62	1,748,372.35	1,566,208.24
Travel-Instate	433,460.50	372,712.64	394,392.24	371,553.27
Travel Out-of-State	117,619.70	94,175.37	48,537.54	98,663.24
Repairs and Maintenance	15,530.47	27,347.46	20,970.55	15,569.08
Rentals and Leases	888,217.12	862,249.99	827,217.26	742,665.08
Utilities and Communication	216,724.25	202,484.35	199,073.13	216,123.49
Professional Services	1,485,313.98	1,392,078.74	1,238,045.43	669,210.37
Supplies, Materials and Operating Expenses	407,225.64	349,429.49	254,625.28	337,293.49
Transportation Equipment Operations	122,389.96	107,103.87	90,850.54	72,044.43
Grants and Benefits	3,494.97	77,797.14	4,869.78	500.00
Capital Outlay		187,321.08		
Transportation Equipment Purchases	268,342.00	129,996.96	112,387.40	48,814.20
Other Equipment Purchases	190,914.71	161,466.86	57,879.46	623,086.11
Total Operating Disbursements	<u>13,050,926.58</u>	<u>11,750,795.07</u>	<u>10,500,775.79</u>	<u>10,488,511.86</u>
Reversions to the General Fund			<u>999,959.43</u>	<u>557,798.25</u>
Total Disbursements	<u>13,050,926.58</u>	<u>11,750,795.07</u>	<u>11,500,735.22</u>	<u>11,046,310.11</u>
Net Increase/(Decrease) in Fund Balance	1,184,524.14	1,167,053.72	865,764.01	229,935.64
Cash Balance at Beginning of Year	<u>7,623,218.31</u>	<u>6,456,164.59</u>	<u>5,590,400.58</u>	<u>5,360,464.94</u>
Cash Balance at End of Year	8,807,742.45	7,623,218.31	6,456,164.59	5,590,400.58
Reserved for Year-end Obligations	<u>(2,001,636.75)</u>	<u>(1,058,072.46)</u>	<u>(2,901,686.75)</u>	<u>(1,531,204.71)</u>
Unobligated Cash Balance at Year end	<u>\$6,806,105.70</u>	<u>\$6,565,145.85</u>	<u>\$3,554,477.84</u>	<u>\$4,059,195.87</u>

Operating Receipts vs. Operating Disbursements (Chart)



QUESTIONNAIRES

Insurance Company

Questionnaires were sent to one hundred (100) insurance companies. Forty one (41) responded.

Question #1

Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?

35 Yes 4 No 1 Unknown 1 No Opinion

Question #2

Do you think any of the Department of Insurance's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

6 Yes 25 No 9 Unknown 1 No Opinion

"Different laws and regulations by states cause a big burden."

Question #3

Do you think any of the Department of Insurance's requirements are irrelevant to the competent practice of your profession?

5 Yes 25 No 9 Unknown 2 No Opinion

Question #4

Are you adequately informed by the Department of Insurance of changes to and interpretations of departmental positions, policies, rules and laws?

27 Yes 8 No 5 Unknown 1 No Opinion

Question #5

Has the Department of Insurance performed your licensing and renewal in a timely manner?

37 Yes 1 No 2 Unknown 1 No Opinion

Question #6

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department of Insurance doing to address the issue(s)?

“Threat of federal regulation. The Alabama Department of Insurance is opposing, as they should.”

“The regulatory mandates are applied in a way that hurt my company. I just paid the Department of Insurance \$50,000 in examiner fees over a six month exam for a one-man company that could have been done in no more than two weeks and a couple of thousand dollars. As long as I am financially sound and complying with licensing requirements, I foresee a further burden pushed by the NAIC and state regardless of the size of a company that will force out small companies like mine. With federal oversight on the horizon, I don’t expect my company will be able to withstand another layer of bureaucracy. I have no complaints about the employees. I do hope they all meet the requirements set forth for the positions hired.”

“The exorbitant cost associated with the redundant state financial exams.”

“Tort reform.”

“Minimum limits.”

“Property capacity-adverse tort environment. The Department of Insurance is doing nothing to effectively address this issue.”

“Permitting adjusters from Georgia, Tennessee and Florida coming into state to handle claims without an Alabama license.”

“People trying to gauge others’ insurance companies, or their own. I do not know what can be done unless adjusters get tougher.”

“Technology is eliminating the personal touch that the insured deserves. Insured people like to see the adjuster when a claim is being handled. They like the personal touch. Most claims are handled by telephone now.”

“Proof of liability insurance coverage should be verified at the time a tag is purchased. This should be done by the State of Alabama and not individual counties.”

Question #7

Do you think the Department of Insurance and its staff are satisfactorily performing their duties?

32 Yes 2 No 7 Unknown _____ No Opinion

“Company examination was too lengthy and expensive.”

“Yes, regarding the staff in Montgomery. The on-site examinations are too long and sometimes focus on non-significant issues.”

Question #8

Has any member of the Department of Insurance or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

 0 Yes

 41 No

Insurance Producer

Questionnaires were sent to one hundred (100) insurance producers. Forty one (41) responded.

Question #1

Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?

38 Yes 1 No Unknown 2 No Opinion

Question #2

Do you think any of the Department of Insurance's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

7 Yes 30 No 2 Unknown 2 No Opinion

Question #3

Do you think any of the Department of Insurance's requirements are irrelevant to the competent practice of your profession?

8 Yes 27 No 5 Unknown 1 No Opinion

Question #4

Are you adequately informed by the Department of Insurance of changes to and interpretations of departmental policies, rules and laws?

16 Yes 13 No 9 Unknown 3 No Opinion

Question #5

Has the Department of Insurance performed your licensing and renewal in a timely manner?

40 Yes 1 No

Question #6

Do you consider mandatory continuing education necessary for competent practice?

25 Yes 12 No 2 Unknown 2 No Opinion

Question #7

Has the Department of Insurance approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

28 Yes 1 No 6 Unknown 6 No Opinion

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department of Insurance doing to address the issue(s)?

“I have been a licensed Life Insurance Producer for ten plus years. At this point I am not at all sure issues relating to the 3/31/2007 renewal of my producer license have been resolved. The questions are regarding completion of continuing education requirements. I took a course, took the test, and mailed the test to the Continuing Education provider on March 24, 2007. I then renewed on March 31 and answered the question on the online renewal application “Yes” that I had completed the continuing education requirement. I believed that taking the course, taking the test and mailing to the Continuing Education provider was all I needed to do. Thus I thought I was complete. On April 9th a letter was sent by the Insurance Department stating that an audit of continuing education was underway and they wanted me to provide a copy of my completion certificate. One or two days after I received the letter of April 9th I received the certificate of completion from the provider. The certificate showed a completion date of April 3, 2007. I made a copy and mailed it in. I enclosed a letter stating the facts as explained above. Subsequently, I received what I felt was a terse, threatening letter from a legal assistant. That letter stated that I had sworn under penalty of perjury that I had completed the continuing education requirements and that indeed I had not. The letter gave no explanation of exactly how I had violated the requirements yet it explained that my written response was expected within 15 days. It was seven days from the date of that letter that I received it. I tried to call and get an explanation of exactly how I had violated the requirements but only got an answering machine. So when I wrote my response I stated my assumptions of how I had supposedly violated the law. I was extremely disappointed with what I felt was an embarrassing lack of professionalism in the tone of their letter and the fact that I was accused of violating the requirements with no explanation of exactly what the violation was. We will wait and see how the department handles my written explanation and license renewal.”

“Property coverage availability in Mobile and Baldwin counties. The department needs to strongly encourage companies to continue writing wind/hail insurance in their counties if they wish to write in the remainder of the state. Remind companies that Mobile, AL is 31 miles from the Gulf of Mexico.”

“It is too easy to get a license.”

Insurance Producer Questionnaire

“Testing qualifications in the state are too hard. Our company is having a difficult time getting new agents to pass. Only about fifty-one percent, this needs to be addressed.”

“Rising rates in the southern regions due to wind/hail storms. I haven’t been notified of any action being taken by the state.”

“Need for federal charter.”

“Increasing liability limits on mandatory coverage for auto insurance, and homeowner’s coverage for our region on the gulf coast.”

“Not having enough markets for wind coverage.”

“Timely and effective resolution to agents that violate ethics or legal standards. Once fair and thorough deliberation is complete, swift settlement and remedy should follow.”

“Not enough classes for flood coverage. Attorneys advertise and advise prospects regarding coverage and premium when they shouldn’t.”

“I’m only licensed in Life and Health. My occupation doesn’t involve annuities and all; therefore I think annuities should be separated.”

“Better regulation of uninsured motorist.”

“Many of the rules/regulations are outdated and should be reviewed for accuracy of current times. I don’t know what the department is doing to address this issue or any other issues.”

“Not mailing out renewal notices.”

“By issuing everything online this year, I think it has caused some confusion and needs to be addressed.”

“Enforcement of mandatory auto insurance laws and an increase to at least 25/50/25 limits. I don’t know if the department is doing anything to address the issue.”

Question #9

Do you think the Department of Insurance and its staff are satisfactorily performing their duties?

32 Yes

2 No

4 Unknown

3 No Opinion

Question #10

Has any member of the Department of Insurance or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a departmental service for you?

 0 Yes

 41 No

Pre-need Company

Questionnaires were sent to fifty (50) pre-need companies. Twenty nine (29) responded.

Question #1

Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?

20 Yes 8 No 1 No Opinion

“Absolutely not. The Department of Insurance is not protecting public welfare. They are harassing funeral homeowners. They have the attitude they are the law.”

“There should be regulations, but not by the Department of Insurance.”

“Also I think the Department of Insurance needs to spend some quality time with us to understand better the funeral industry. It is not just a go by law; there are some exceptions which need to be understood.”

“Yes, someone should regulate it, but maybe not the Department.”

“Unfortunately, you cannot legislate honesty.”

“But not by the Department of Insurance unless they can return to the intent of the law.”

Question #2

Do you think any of the Department of Insurance’s laws, rules, and policies are an unnecessary restriction on the practice of your profession?

18 Yes 8 No 2 Unknown 1 No Opinion

“Pre-need funerals have been in practice for years. The money we collected for pre-need was put in a special account, **NOT IN OUR CHECKING ACCOUNT**. It was to be used at the time of need.”

“The policy regarding audits is a restriction. There appears to be *no* policy other than to audit everyone, regardless. Why wouldn’t they want to audit everyone if it’s at no cost to them and make money on it? They need oversight.”

“I very much disagree with the policy of a man being able to write an edict as such when *interpreting* the laws and his/her word becoming the *gospel*.”

“I would like to see us come up with a simpler way to prove to the Department that we are operating properly without the expensive accounting requirements.”

Question #3

Do you think any of the Department of Insurance’s requirements are irrelevant to the competent practice of your profession?

21 Yes 7 No 1 Unknown

“We do not think they should have the authority to interfere with our profession. We are very able and capable of handling our business; we have done so since 1982.”

“Treating funeral homes as if they are an insurance sales business. We don’t sale insurance! Never have and never will. They don’t differentiate between funeral home to funeral home.”

“Sometimes, not in all cases.”

“Some state agencies need to ensure that funeral homes are properly trusting or ensuring. We need to be careful not to create more of a burden on the homes.”

Question #4

Are you adequately informed by the Department of Insurance of changes to and interpretations of board positions, policies, rules and laws?

9 Yes 17 No 2 Unknown 1 No Opinion

“They make their laws, and inform us of what they want us to know.”

Question #5

Has the Department of Insurance performed your licensing and renewal in a timely manner?

23 Yes 3 No 3 No Opinion

“Again it’s all about money. The more they get, the more they want.”

“They have returned our renewal application every year we have submitted it. Each time they said it was incomplete or incorrect. Each year, our CPA completes the forms the same as the previous year, but it continues to be wrong in their eyes each year.”

Question #6

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department of Insurance doing to address this issue?

“The Department of Insurance has done nothing to help, just harass. [REDACTED] made a number of phone calls, telephoning us to speed our accountant up. Well, she works her way, not his way. He has been very annoying.”

“From the letterhead you can see that we are a funeral home. There are several issues relating to renewal of our Preneed Certificate of Authority that we find to be at the very least an irritant. First of all the law that passed the legislature states that a cancellation penalty on a pre-need contract must be *reasonable*. [REDACTED] has decided that 25% is the maximum reasonable amount. We believe any measure of reasonable should be in the eye and mind of the purchaser of the contract and if our penalty is too high then perhaps the purchaser should purchase their pre-need contract somewhere else. We do not believe that there should be a dictated maximum from the Department of Insurance. If the legislature wanted a stated maximum then they would have set that maximum in their statute before they passed it.

Secondly, the forms on which we renew the Certificate of Authority have not been the same any two years in a row. The information they request is not the same from year to year. We made initial application in 2002 and have renewed five times. One would hope they would know what they need by now.

Third, the department apparently has this attitude that if a pre-need is funded by an insurance policy and the policy death benefit is more than the then current price of the funeral the funeral home should only receive the then current funeral amount at time of death. There are a couple of things inconsistent with this paradigm. Say for example the family pays \$5,000 at time of pre-need. So the selected insurance policy has a death benefit of \$6,500 and pays no commission to the seller. At death the then current price of the funeral is \$6100. The Insurance Commissioner feels the funeral home should rebate the \$400 difference to the family. Now suppose the policy selected has a death benefit of \$6,000 and pays the seller (funeral director with a life insurance license) a commission of \$700. The insurance commissioner apparently has no problem with this arrangement. Note however that the funeral home collected \$6,700 (\$6,000 death benefit and \$700 commission) for a funeral whose current cost is \$6,100. Under yet another scenario suppose no life insurance policy was purchased and the money was invested through a trustee in the stock market and doubled to \$10,000. The insurance commissioner has no problem with the funeral home receiving \$10,000 for a \$6,100 funeral. The insurance commissioner is hung up on the funeral director not collecting a death benefit of more than the then current price of the funeral. My concern with this is which insurance funded pre-need funeral arrangement is in the beset interest of the purchaser? I suggest the highest death benefit. Which pre-need funeral arrangement is in the best interest of the receiver should the funeral home go under? I suggest the highest death benefit.

Fourth, the insurance commissioner has no provision for what should happen if the family brings in a life insurance policy and wants to exchange it for a pre-need

contract. Say the policy is for \$10,000. The family wants to get ownership of the policy out of the family to remove its value from the estate and to remove the asset from the insured should they try to qualify for Medicaid. The insurance department does not want the funeral home to own the policy even if by assignment. The insurance department sees a windfall of income to the funeral home if the policy is for more than the then current price of the funeral. Say the family is in a financial position that they must quit making premium payments. Thus it is not difficult to imagine the family in a position of either surrendering the policy for cash in an amount insufficient to purchase a pre-need, accepting reduced paid up insurance in an amount probably not sufficient to pay for a funeral at time of death, accepting extended term for a period of time probably too short to provide any death benefit, or assigning the policy to the pre-need provider. The insurance commissioner sees the assignment to the funeral home as an unacceptable windfall. Yet for the family to surrender the policy, accept reduced paid up or extended term for some reason is not viewed by the departments as a windfall to the issuer of the policy. In other words if the issuing insurance company keeps the money that is okay; but if the funeral home gets the money then that is unacceptable. A life insurance policy is zero sum arrangement. The money goes either back to the insurance company or to the funeral home. For some reason the department is not comfortable with the funds going to the funeral home.

Fifth is the idea that when a purchaser comes in to enter a pre-need contract and it is to be funded by insurance the family is not to make the check payable to the funeral home but rather to the insurance company. This causes several problems. Some funeral homes fund some pre-need contracts with insurance and place the funds for some other pre-need contracts in trust. Look at the sequence of events. The family comes in to discuss pre-need. The funeral director explains the methodology of funding a pre-need contract with insurance or with a trust. The family makes their selections of merchandise and services. The funeral director (also a licensed life insurance producer) works with the family to fill in several life insurance applications. In order to not waste the family's time, after the family leaves the funeral home the funeral director works with the trust and each of several insurance companies to decide which investment is the best value. The funds are then forwarded to the trustee or chosen insurance company. At the time the family is present the exact direction or amount of investment of the funds is not yet decided. Thus for the family to make the check to the insurance company is nearly impossible. One other choice is for the family to leave the payee blank on the check. That seems exactly opposite of what we assume to be the intent of the department in wanting the check payable to the insurance company. Another problem arises when the funeral home pays a commission to a pre-need salesman out of the money paid for the funeral. I cannot imagine the trustee or the insurance company being willing to accept for say \$5,000 and writing a refund check to the pre-need sales agent for the sales commission amount of say \$250. The desired procedures of the Department of Insurance simply do not jive with the operating procedures of a funeral home. Rather than sit down with several directors and offer a proposed operating procedure and ask how it would affect funeral homes, the department simply dictates what it wants and if that hinders a funeral home then tough luck for the funeral home. Separate from all that is that we are required to be able to show the dates we received funds and the dates we invested the funds for all pre-need contracts. If the funeral home is not the payee on the check then

we make no deposit. If we write no check to the trustee of insurance company then we have no independent way of proving timely investment of the funds. Thus we are tasked by the department to track all the funds but not allowed to deposit them.”

“The intent of the law governing Pre-need was to see that all pre-need funerals were to be properly funded (insurance, trust, letter of credit) so that when they became *at-need*, funding would be available. The Department of Insurance has added regulations on top of regulations to this law. We have to obtain a Certificate of Authority from the Department of Insurance. In order to do this, we must file a financial statement done in GAAP Accounting, which costs each establishment \$1,500 - \$2,000. According to practicing CPA’s, this is an outdated method.

For the past two years, the Department of Insurance has told us that they are going to a simpler financial statement that we can prepare ourselves. However, nothing has been done to date. When the Department of Insurance comes to our businesses to do an audit, they require numerous documents, which have nothing to do with the funding of pre-need contracts, thus spending one week at our facilities at a cost to us of \$1,500 - \$2,000, and in some cases even more. This law was supposed to be a consumer protection law, but as you can see, it only adds to the consumer’s expense.

At the present time (according to the Department of Insurance), only 50% of the funeral homes in Alabama have a Certificate of Authority law. Nothing is being done to correct this. It seems only funeral homes with COA’s are being made to comply with the law. I personally know of a firm that wrote a Pre-need contract, and that contract was carried to the Department of Insurance over two years ago, and nothing was or has been done about it. If one business must comply with the law, then all must.

While I was serving as President of the Alabama Funeral Directors Association, I met with leaders from associations in other states across the country. I and my fellow Association officers discussed the problems that Alabama funeral directors were having with the Department of Insurance. Some of those leaders informed me that they have had the same problems in their respective states and were able to have the enforcement of this Pre-need law transferred from the Department of Insurance to the State Treasurer; doing so solved their problem, and all is working well now. It is my suggestion (and that of a majority of funeral directors in our state) that Alabama follow in like manner, if at all possible.”

“The most significant issue in regards to pre-need is the expense of audits being passed on to the funeral home. Audits are performed by the Department as an income generating occurrence. The Department makes money by third party auditees conducting audits at the funeral home’s expense. There are no guidelines as to why a funeral home is audited. I was personally told each funeral home would be audited every few years regardless. I asked if there would be guidelines, such as suspected wrongdoing, and I was told that would happen when suspected. Each funeral home would be audited on a regular basis, regardless. This is a hindrance financially to funeral homes and is not fair and probably isn’t legal. In regards to our county, auditing every funeral home (7) on a regular basis takes money out of our economy, which we cannot afford. Several people in the Insurance Department have an “I’m better than you” attitude. Some are helpful, and some appear to be incompetent. The Alabama Department of Insurance does not

Pre-need Company Questionnaire

appear to be doing anything to rectify audits or to come up with a guideline to follow as to why to audit particular funeral homes. I assure you these expenses are being passed on to the consumer and will affect everyone who reads this, eventually!”

“Needing to audit the homes that are selling pre-need and no Certificate of Authority! I have reported my competitor and have not heard back!”

“The worst problem is the audit process and the charges that the funeral homes encounter because of the audit. It is not fair at all for the funeral homes to pay the state to audit them and it needs to change. We the funeral homes are paying their staff’s salaries. Another issue is the GAAP statement, the cost of the statement and the date that is required.”

“There are too many changes each year my CPA sends our paperwork to the Department. We are charged for the audit, which I think is unfair when you send two people in two different vehicles, which I pay for. Where is the sense in this?”

“I feel the Department is doing enough as long as they continue to do as they are doing (auditing firms).”

“Preneed laws are overregulated. We are charged, taxed and fined for doing the right thing and trying to abide by the rules. Others who do not conform are left alone to do business as usual. Not fair!”

“One of the purposes of the regulation is to ensure financial ability to stay in business. In order to provide financial data with GAAP standards, it has cost me \$30,000 for accounting just for this for three years. This is could go a long way toward my financial stability.”

“I can understand auditing pre-need, but requiring us to show all cash receipts since 2002 and after for all at need is no concern of the Department of Insurance.”

“The most significant issue facing our profession is surviving in an environment of ever shrinking margins of profit. More regulation and audits by the Department of Insurance further increases our cost of operation which then has to be passed on to the consumer.”

“Cost of an audit for a small funeral home makes a hardship for the business. I agree with pre-arranged regulation, but some of the requirements are not necessary.”

“I feel the large amount of paperwork that is requested by the Department of Insurance at renewal time and doing audits are unnecessary and have nothing to do with the pre-need program. I know of nothing being done to decrease the paperwork.”

“The Department needs to understand more about customers’ perceptions and needs for funeral pre-need and stop assuming that it already understands everything it needs to know. An advisory committee might be good.”

Question #7

Do you think the Department of Insurance and its staff are satisfactorily performing their duties?

16 Yes 5 No 2 Unknown 6 No Opinion

“They are not able to oversee the funeral industry’s preneed as they operate now. They are not staffed to handle the industry. This is also why they wanted the legislature to put the cost of the audit on the backs of the funeral homes.”

“As to the letter of the law! But as to what knowledge of the funeral business, no.”

“I would love to see more opportunities for open dialogue between the Department and people in our profession.”

“They have too much authority. Get into the business that is not any of their business. They do not answer our questions. For instance, we were audited in October, 2006. There was no reason for this, everything was in order. We did not ask to be audited, and were charged over \$2,600. Three people came in three rental cars, which we had to pay for. They came around 12:00 p.m. on Tuesday and they left around 10:00 a.m. on Friday that looks like about 3 and one half days. We were charged for five days. The last time I looked, three people could ride in one car. Their social life is no concern to us. We had everything ready when they arrived. They could have easily completed the job in one day. We only sold three pre-need funerals in 2006. Also, one young man was in training, got the same as the other two. We do not feel we were treated fairly. Other funeral homes in the area were not charged as much as we were. We sent copies of the statements, and asked that they explain the changes. We wanted to know what we had paid for; to this day we have had no response. They have put a financial burden on our funeral home. We have to furnish a financial statement every year, to be able to get a certificate of authority. Our accountant does not come cheap. We were out over \$21,000 in 2006. We were fined \$9,000.00 for selling a few pre-need funerals before we got our Certificate of Authority. We think that was a little too much because the money we had collected was in a special account in the bank. Then they tell us we have to transfer it to a Trust of their choice. The money was safe in our bank, and our clients were happy. They are not especially happy not knowing anything about this place. We also had to furnish them with a letter telling them how much money we can borrow. In our opinion that was none of their business. Also we do not understand why we have to furnish a financial statement to them, we owe them nothing. To make a long story short, we feel we had to give information that was none of their business, had nothing to do with their business, if you want to call it a business. They asked for records from 2002 on our at

need funerals, that had nothing to do with the Department of Insurance. Another thing we would like an answer to if we decide to cancel our Certificate of Authority, and not renew our license, why would we still have to answer to the Department of Insurance? [REDACTED] said we would be, and still be audited by them. This is costing us so much money every year; we will not be able to continue to do it. We do not apologize for anything we have told you. We are hard working, honest people, and we feel it's time to stand for the truth."

Question #8

Has any member of the Department of Insurance or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a departmental service for you?

 0 Yes 29 No

"All personnel have always acted in a thorough professional manner. There has never been a hint of impropriety.

Pre-need Cemetery

Questionnaires were sent to fifty (50) pre-need cemeteries. Twenty five (25) responded.

Question #1

Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?

18 Yes 7 No

Question #2

Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?

18 Yes 5 No 2 No Opinion

“I think the Department of Insurance should be more concerned with cemeteries that have not applied for a Certificate of Authority than with obsessing over reporting details for those that are making efforts to comply with the law.”

“We should be able to invest pre-need money where we want to as long as we advise the Insurance Department where the investment is.”

Question #3

Do you think any of the Department of Insurance’s laws, rules, and policies are an unnecessary restriction on the practice of your profession?

14 Yes 9 No 2 No Opinion

“The requirements were irrelevant for us. Our cemetery was accumulating perpetual care monies before the requirements; however many other operations were not and more importantly is still not.”

Question #4

Are you adequately informed by the Department of Insurance of changes to and interpretations of departmental positions, policies, rules and laws?

10 Yes 13 No 1 Unknown 1 No Opinion

“They are especially good with helping with questions.”

“Licensees should receive notification of changes in the mail.”

Question #5

Has the Department of Insurance performed your licensing and renewal in a timely manner?

21 Yes 4 No

“We have not received one renewal during the year since 2002 that did not require any additional correspondence. Always, there is something. Again, what about those operations, funeral homes and cemeteries that haven’t even applied?”

Question #6

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department of Insurance doing to address the issue(s)?

“Unlicensed cemeteries and funeral homes selling pre-need.”

“Probably not the most significant issue, but becoming increasingly burdensome is governmental regulations including reporting requirements.”

“Our particular profession is not insurance related. Rules and regulations especially in financial reporting are patterned after entities other than our field. Lack of cooperation on several matters resulting in higher prices and fees to consumers.”

“GAAP financial statements are unnecessary for our industry.”

“Funeral homes and cemeteries are still selling pre-need without a Certificate of Authority.”

“Education of the public about the law and its interpretation. I know that the Insurance Department informs people about where to get the law off the website, and some information over the phone about the law. The law may not be the best law, but at least we have a law.”

Treating all companies the same. Those with good pre-need money practices and those who use pre-need money inappropriately!”

“I think the board was not ready for this mess. They should look at some other states to get help. They need more trained people to talk to in Montgomery. I hate this unknown stuff.”

“Making sure monies are either trusted or insured for pre-need funerals.”

Pre-need Cemetery Questionnaire

“Cost of performing business. The department’s overregulation has cost my business too much money. The hassle of renewal and the cost of the Certificate of Authority are crazy. No help in addressing this issue.”

“The amount of money we have to trust on merchandise and service is too high. It needs to be reasonable like endowment care. The department isn’t doing anything.”

“The accounting practice is too detailed.”

Question #7

Do you think the Department of Insurance and its staff are satisfactorily performing their duties?

18 Yes 4 No 1 Unknown 2 No Opinion

“They are knowledgeable and display a professional and courteous attitude that is much appreciated. I believe the focus of the Department of Insurance should be those firms that haven’t made application for a pre-need Certificate of Authority. It seems obvious to me that the greater threat to the public welfare is there, not necessarily with firms who are behaving in a responsible manner and making efforts to comply with Alabama law.”

Question #8

Has any member of the Department of Insurance or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

0 Yes 25 No

Pre-need Sales Agent

Questionnaires were sent to fifty (50) pre-need sales agents. Nineteen (19) responded.

Question #1

Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?

15 Yes 2 No 2 No Opinion

"I agree that that the public is better protected by some regulation of my profession, but is the "Dept. of Insurance" the one to regulate pre-need?"

Question #2

Do you think any of the Department of Insurance laws, rules, and policies are an unnecessary restriction on the practice of your profession?

5 Yes 13 No 1 Unknown

"Not at the present time."

"The laws, rules, & policies VARY from funeral home to funeral home."

Question #3

Do you think any of the Department of Insurance requirements are irrelevant to the competent practice of your profession?

5 Yes 11 No 2 Unknown 1 No Opinion

"Not at this time."

Question #4

Are you adequately informed by the Department of Insurance of changes to and interpretations of board positions, policies, rules and laws?

5 Yes 13 No 1 No Opinion

"As far as I know."

"I have never seen a copy of any changes that may have been made."

Question #5

Has the Department of Insurance performed your licensing and renewal in a timely manner?

____ 16 ____ Yes ____ 2 ____ No ____ 1 ____ No Opinion

Question #6

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department of Insurance doing to address the issue(s)?

“All funeral homes should have to have a pre-need certificate. It is not very practical to think that just because you don’t have a certificate of authority you are not subject to the law. Nor, are you not writing pre-needs of some sort. It is a burden on all funeral homes to have to pay for their own audit and expenses incurred due to that audit by the auditor. If the state is going to pass a law that states audits are to be performed, than along with that law-bill, should be funds to cover the state employee handling the audit.”

“Privately owned cemeteries & companies that sell merchandise to the public should be regulated!”

“The % of return on our deposits seems too low.”

“1) Theft of pre-need funds needs to be a felony. 2) State approved trust companies should be required to report to funeral homes in a format that coincides with the reports required by the department to be reported by the funeral home.”

“The most significant issue facing the funeral profession in Alabama is that there are still a large number of funeral homes still doing pre-need funeral arrangements without a Certificate of Authority. The only way that I am aware of that this issue is being addressed is when someone makes an annoyance call and reports a funeral home. I think the Department of Insurance can do better than this.”

“I can understand having a pre need insurance board. But they are asking for too much information, and it’s not fair. Prices are going to go up on my GPL because of extra staff for all the information they are asking for. It’s just too much information, and getting into people financial business.”

“The new insurance laws rules & policies all are being addressed. Funeral homes that have been charged need to be dealt with now! Letting them operate is bad for our and your profession.”

Pre-need Sales Agent Questionnaire

“Preneed- The law has only added to the chaos. Those Funeral Directors who never trusted or insured funds- still sell one without a COA- If they won’t follow their moral conscience (?), they surely won’t adhere to the laws.”

Question #7

Do you think the Department of Insurance and its staff are satisfactorily performing their duties?

10 Yes 5 No 3 Unknown 1 No Opinion

“I have no idea. How can we find out what is going on.”

Question #8

Has any member of the Department of Insurance or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

0 Yes 19 No

Blasting Contractors

Questionnaires were sent to twenty (20) blasting contractors. Seven (7) responded.

Question #1

Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?

___6___ Yes ___1___ Unknown

Question #2

Do you think any of the Department of Insurance laws, rules, and policies are an unnecessary restriction on the practice of your profession?

___1___ Yes ___5___ No ___1___ Unknown

Question #3

Do you think any of the Department of Insurance requirements are irrelevant to the competent practice of your profession?

___1___ Yes ___5___ No ___1___ Unknown

Question #4

Are you adequately informed by the Department of Insurance of changes to and interpretations of board positions, policies, rules and laws?

___3___ Yes ___2___ No ___1___ Unknown ___1___ No Opinion

Question #5

Has the Department of Insurance performed your licensing and renewal in a timely manner?

___7___ Yes ___0___ No

Question #6

Do you consider mandatory continuing education necessary for competent practice?

___4___ Yes ___2___ No ___1___ Unknown

“As long as the industry is consulted before guidelines are established.”

Question #7

Has the Department of Insurance approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

 3 Yes 3 Unknown 1 No Opinion

“Continuing education is not required at this time.”

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department of Insurance doing to address the issue(s)?

“Laws in Alabama allowing law suits to be filed with no basis. No one is working to solve this problem. Walker County is the worst of any county.”

“Allowing plumbers to install fire protection systems.”

“I like that the Dept. of Ins. works with the International Society of Explosive Engineers to extract professional information in regards to our work in construction, demolition, quarry strip mining and underground. This should keep our state & local regulations and continued education ahead of the safety required.”

Question #9

Do you think the Department of Insurance and its staff are satisfactorily performing their duties?

 6 Yes 1 Unknown

Question #10

Has any member of the Department of Insurance or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a departmental service for you?

 0 Yes 7 No

Fire Pumps

Questionnaires were sent to twenty (20) fire pump licensees. Nine (9) responded.

Question #1

Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?

 6 Yes 2 No 1 No Opinion

Question #2

Do you think any of the Department of Insurance laws, rules, and policies are an unnecessary restriction on the practice of your profession?

 3 Yes 6 No

Question #3

Do you think any of the Department of Insurance requirements are irrelevant to the competent practice of your profession?

 2 Yes 4 No 3 Unknown

Question #4

Are you adequately informed by the Department of Insurance of changes to and interpretations of board positions, policies, rules and laws?

 2 Yes 4 No 3 Unknown

Question #5

Has the Department of Insurance performed your licensing and renewal in a timely manner?

 7 Yes 1 No 1 No Opinion

Question #6

Do you consider mandatory continuing education necessary for competent practice?

 6 Yes 3 No

Question #7

Has the Department of Insurance approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

 2 No 7 Unknown

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department of Insurance doing to address the issue(s)?

“A license to run fire pump is totally not necessary.”

“Incompetent Contractors”

Question #9

Do you think the Department of Insurance and its staff are satisfactorily performing their duties?

 4 Yes 1 No 4 Unknown

Question #10

Has any member of the Department of Insurance or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a departmental service for you?

 0 Yes 9 No

Fire Sprinkler Installers

Questionnaires were sent to twenty five (25) fire sprinkler installers. Sixteen (16) responded.

Question #1

Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?

12 Yes 1 No 3 No Opinion

Question #2

Do you think any of the Department of Insurance laws, rules, and policies are an unnecessary restriction on the practice of your profession?

3 Yes 10 No 1 Unknown 2 No Opinion

Question #3

Do you think any of the Department of Insurance requirements are irrelevant to the competent practice of your profession?

2 Yes 9 No 1 Unknown 4 No Opinion

Question #4

Are you adequately informed by the Department of Insurance of changes to and interpretations of board positions, policies, rules and laws?

9 Yes 4 No 2 Unknown 1 No Opinion

Question #5

Has the Department of Insurance performed your licensing and renewal in a timely manner?

14 Yes 2 No

Question #6

Do you consider mandatory continuing education necessary for competent practice?

10 Yes 6 No

Fire Sprinkler Installer Questionnaire

“This is a requirement for keeping certification on a national basis.”

Question #7

Has the Department of Insurance approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

7 Yes 3 No 4 Unknown 2 No Opinion

“Our industry works with the Dept. of Insurance to provide training for sprinkler company personnel, local & state fire marshals & fire departments & businesses needing training for fire protection purposes.”

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department of Insurance doing to address the issue(s)?

“Irresponsible contractors.”

“Help us to manage fire sprinkler industry in Alabama by identifying and stopping companies & individuals who do not have adequate licensing to work.”

“Companies not properly maintaining their systems and trying to collect insurance funds when they fail or prematurely activate (property owners).”

“The most significant issue facing our profession in Alabama is prevalence & ability of unqualified people to practice- we need stricter laws & enforcement to ensure qualifications.”

“Currently the law requires a NICET lvl 3 to obtain a license in Alabama. I know of at least 1 company that does not employ a NICET lvl 3 but pays someone for use of their NICET license. It is not fair to those of us who have worked more than 10 years to obtain license for a “good ole boy” to buy a pickup truck, “rent” a professional license, and install life saving-code required equipment. I suppose when someone dies in a fire the Dept. of Insurance will reform this law.”

“Though Dept. of Insurance (State Fire Marshall’s Office) is supportive of continuing education, it is not mandatory in Alabama. * I think it should be. * In the field of fire sprinkler installation.”

“1) Code Changes- They advise when new codes will be enforced in Alabama.

2) Not enough trained people to perform competent work. The Fire marshal has advised & worked with the Alabama fire sprinkler assn. and contractors to remedy the problem.”

Fire Sprinkler Installer Questionnaire

“Effective communication & clear communication with professional fire protection companies. Don’t know that it is being addressed properly.”

“Effective communications and clear communications with professional fire protection companies. Don’t know that it is being addressed properly.”

“Individual municipalities that require a P.E. stamp on drawings when it is not necessary. Something should be done by this state to stop this.”

“The Department of Insurance is doing a good job of requiring fire sprinkler contractors to be approved by NICET.”

Question #9

Do you think the Department of Insurance and its staff are satisfactorily performing their duties?

14 Yes 1 Unknown 1 No Opinion

Question #10

Has any member of the Department of Insurance or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a departmental service for you?

0 Yes 16 No

“The Dept. of Insurance & Fire Marshal’s office has, in my opinion, tried to perform their jobs & protect the lives & property of the people of the state of Alabama. They work with our industry very well.”

Complainant

Questionnaires were sent to one hundred (100) complainants. Thirty six (36) responded.

Question #1

Was your complaint filed with the Department of Insurance by:

 11 Mail 14 Phone 1 Fax 4 Internet
 2 No Response 4 Mail & Phone

“I did not file a formal complaint. The employee said the Dept. of Insurance had no control of [REDACTED] billing for premiums. I explained [REDACTED] was notified of our move from a larger house to garden home (401). [REDACTED] continued invoices with specifications of previous residence. I contacted State Ins. Dept. for help in getting refund of premium overpayments.”

Question #2

Was receipt of your complaint acknowledged?

 22 Yes 8 No 4 Unknown 2 No Response

“The phone call was acknowledged, the mail was not acknowledged.”

If yes, approximately how long after you filed your complaint were you contacted by the board?

 6 Immediately 6 Within 10 days 3 Within 20 days
 1 Within 30 days 1 More than 30 days 6 Unknown
 13 No Response

“Never.”

“Spoke to him on phone when I called.”

“My letter was dated 7/10/05 to Gov. Riley w/copy sent to Insurance Department on 11/8/05 response from Mr. Robert Turner, Dept. of Ins.”

“Never contacted after phone call.”

“Never contacted by board.”

Complainant Questionnaire

“Was not contacted in response to letter.”

“We called and the woman that works the cases told us that they were terribly understaffed and it would take a long time for our file to be reviewed!”

Question #3

Was the employee who responded to your complaint knowledgeable and courteous?

 2 Knowledgeable 4 Courteous 18 Both

 4 Neither 8 No Response

“Not Knowledgeable.”

“I suppose he was knowledgeable. He was not discourteous.”

Question #4

Did the Department of Insurance communicate the results of investigating your complaint to you?

 20 Yes 9 No 4 Unknown 3 No Response

“However, the results were inaccurate.”

“Two years & we’re still waiting!!”

Question #5

Do you think the Department of Insurance did everything it could to resolve your complaint?

 13 Yes 12 No 9 Unknown 2 No Response

“I am still not satisfied with the situation but this department did what they could as far as answering my questions.”

“Had to argue with underwriter myself to settle issue.”

“They did nothing, what should we expect, it’s the government. If you aren’t collecting money you aren’t happy.”

Question #6

Were you satisfied with your dealings with the Department of Insurance?

13 Yes 13 No 7 Unknown 3 No Response

“Very satisfied. Good Job.”

“They were very nice.”

“Brief Summary of Dissatisfaction:

- Received letter canceling homeowner policy.
- Letter was dated 61 days after policy went into effect.
- Faxed letter & policy to Department of Insurance highlighting policy could not be cancelled after 60 days.
- Department of Insurance contacted the underwriter and informed me that the underwriter stated they were within their policy.
- After many arguments I had with the underwriter and consulting a lawyer, the underwriter was finally convinced that they made a mistake.
- The time I spent consulting with the Department of Insurance was a waste of time.”

“Thank you for your concern. I am a widow in my eighties. Resident of Montgomery since May 1964. My husband and I relied on agents since we trusted them. They are for self and company not policy-holders. We were naïve for many years. I cancelled collision coverage. This did not reduce premium by the same exact amount of previous collision coverage paid [REDACTED].”

“I do not under what conditions they following this contact, I had a major problem with [REDACTED] auto insurance. Premiums on a 1994 car bought new continued as the new car rate each year until about 2005. I called the agent for amount of auto’s current value \$ 4,000.00. We had paid the same amount of premium for collision all those years. [REDACTED] would not refund any overpaid collision insurance. I did not contact the State Dept. of Ins. about this because I had negative results previously. I still do not know under what conditions, if any, the Dept. of Ins. assists policy holders. I also had a problem with [REDACTED] life insurance. Two of their agents misrepresented verbally a policy conversion. This came to light when my husband died. I didn’t see the point of contacting state Ins.–Dept. again.”

“Would you be? Our house burned down, we had replacement insurance and our insurance company beat us out of at least \$100,000. That’s with us using an attorney!”

APPENDICES

Smart Budget Reports

State of Alabama EBO Form No. 4b	AGENCY NAME: ALABAMA DEPARTMENT OF INSURANCE FY 2005-2006 SMART OPERATIONS PLAN	Agency No. 038		
		ACTUAL FY04	BUDGET FY05	BUDGET FY06
MISSION	To serve the people of Alabama through fair regulation of the insurance industry, consumer protection and market stabilization. (Ala. Code Section 27-2-1) (Governor's Priorities 1 and 5)			
VISION	People who rely on or are engaged in the business of insurance will be treated fairly and efficiently.			
VALUES	Responsive – To the needs and concerns of Alabama citizens, to the individuals engaged in the business of insurance, to the companies that supply insurance products, to all who have need of the Department's help, and to our team members in helping them develop professionally. Opportunistic – Think and act creatively in developing solutions to people's problems. Take advantage of opportunities to develop the staff's ability to better serve our constituent groups and to help develop the staff as individuals. Anticipatory – Take proactive approaches to potential market changes as they relate to consumers, producers and companies. Plan ahead for crises, rather than manage after the fact. Decency – Treat constituents the way we wish to be treated. Create a work atmosphere that promotes human kindness.			
CRITICAL ISSUES				
Internal	Personnel plan for succession / training. Catastrophe management.			
External	Funding stability Pre-need regulation crisis. Catastrophe management. Federal intervention into state regulation of insurance. Anti-fraud efforts.			
PROGRAM	Alabama Department of Insurance	\$10,276,927	\$18,557,172	\$17,830,245
MISSION	To serve the people of Alabama through fair regulation of the industry, consumer protection and market stabilization.			
GOAL(S)	G1 Efficient regulation of all facets of insurance. G2 Safeguard / enhance tax revenue G3 Maintain accreditation by National Association of Insurance Commissioners. G4 Manage insurance crises effectively. G5 Prevent loss of life and property through fire safety.			
WORKLOAD	Number of licensees. Number of rate and form filings reviewed. Number of consumer inquiries and complaints. Number of regulated activities.	76,805 21,408 16,477 9,366	79,877 26,376 16,772 8,948	79,877 25,624 16,624 9,156
CRITICAL ISSUES				
Internal	Personnel plan for succession / training. Catastrophe management.			
External	Funding stability. Pre-need regulation crisis. Catastrophe management.			

	Federal intervention into state regulation of insurance. Anti-fraud efforts.			
OBJECTIVES				
Spending	No increase in total spending	\$10,276,927	\$18,557,172	\$17,830,245
Staffing	Increase full-time equivalent staff by no more than 10%. (# of FTE staff)	138	156	163
Efficiency	Maintain cost to generate \$1 revenue to General Fund, Education Trust Fund, Mental Health Fund and Insurance Dept Funds at or below \$0.06. (Cost/revenue) Maintain cost of regulation at or below \$1 per \$1,000 of premiums written. (Cost/\$1,000 premium)	\$0.04 \$0.69	\$0.06 \$1.00	\$0.06 \$1.00
Quality	Process rate and form filings within 30 days of receipt. (average days) Perform fire safety inspections within 30 days of request. (average days)	24 28	30 30	30 30
STRATEGIES	1. ALDOI will implement and execute a legislative plan to seek enactment of its package of bills for license reform, pre-need amendments, Interstate Compact and fraud. (G1 and G2) 2. ALDOI has created and will maintain a team of managers to guide the Department through the NAIC accreditation process, as well as the post-accreditation maintenance period. (G3) 3. ALDOI will develop and follow internal and external catastrophe management plans to continue the operation of the Department and to stabilize the State's insurance market in the event of a catastrophic occurrence. (G4) 4. ALDOI will develop and execute a Fire Safety education program to be administered by the State Fire Marshal's Office to prevent the loss of life and property. (G5)			

Smart Quarterly Performance Report											
Fiscal Year: 2006											
Agency: 038 Insurance Department											
Program: 041 REGULATORY SERVICES											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Workload/Cost Factor	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
WC1: Number of licensees	#	79,877	84,762	79,877	86,601	79,877	88,653	79,877	91,096	79,877	91,096
WC2: Number of rate and form filings reviewed	#	5,973	5,371	5,973	6,887	5,973	7,009	5,973	6,681	23,892	25,948
WC3: Number of consumer inquiries and complaints	#	4,156	1,819	4,156	1,574	4,156	945	4,156	1,460	16,624	5,798
WC4: Number of regulated activities	#	2,289	2,608	2,289	2,329	2,289	2,180	2,289	1,468	9,156	8,585
Spending	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
SP1: No increase in total spending	\$	4,457,581	2,742,262	4,457,561	2,863,186	4,457,561	3,151,466	4,457,562	2,563,328	17,830,245	11,320,242
Staffing	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
ST1: Increase full-time equivalent staff by no More than 10%	# of FTE staff	163	133	163	133	163	136	163	136	163	136
Efficiency	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
EF1: Maintain cost to generate \$1 revenue to General Fund, Education Trust Fund, Mental Health Fund and Insur. Dept Funds at or below \$0.06.	Cost/revenue	0.06	0.05	0.06	0.05	0.06	0.05	0.06	0.05	0.06	0.05
EF2: Maintain cost of regulation at or below \$1 Per \$1,000 of premiums written.	Cost/\$1000 of premiums	1	0.91	1	0.91	1	1	1	0.82	1	0.82
Quality	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
QU1: Process rate and form filings within 90 days of receipt.	Average days	30	13	30	15	30	10	30	10	30	12
QU2: Perform fire safety inspections	Average	30	29	30	25	30	30	30	24	30	27

within 30 days of request.	days									
How have policy decisions and budget determinations made by the governor and the legislature in the fiscal year 2005-06 affected your agency in meeting its desired accomplishments and services?										
Both the Governor's Office and the Legislature continued to recognize this agency's needs in the fiscal year 2005-2006 by approving the budget requests for this agency and by enacting the biennial producer license act, which becomes effective January 1, 2007.										
What administrative improvements did your agency make in fiscal year 2005-06 and what potential improvements do you foresee for future years? Include suggested changes in legislation or administrative procedures which would aid your agency in these improvements.										
The Insurance Department continued to make administrative and technological improvements in the 2005-06 fiscal year, including processing additional license types using an online renewal process and enabling licensees to print their licenses from their personal computers. Computer upgrades made during the fiscal year allowed the Department to better perform its duties and to meet its responsibilities in a more effective and economical manner. Implementation of the biennial license act will result in a more efficient licensing process.										

2007 SMART Operations Plan

Agency/ Org	038 – Insurance Department
Organization	-
Program	041 – REGULATORY SERVICES
Activity	-

Mission	To serve the people of Alabama through fair regulation of the insurance industry, consumer protection and market stabilization.
Vision	People who rely on, or are engaged in the business of insurance will be treated fairly and efficiently.
Values	Responsive – To the needs and concerns of Alabama citizens, to the individuals engaged in the business of insurance, to the companies that supply insurance products, to all who have need of the Department’s help, and to our team members I helping them develop professionally. Opportunistic – think and act creatively in developing solutions to people’s problems. Take advantage of opportunities to develop the staff’s ability to better serve our constituent groups and to help develop the staff as individuals. Anticipatory – Take proactive approaches to potential market changes as they relate to consumers, producers and companies. Plan ahead for crises, rather than manage after the fact. Decency – Treat constituents the way we wish to be treated. Create a work atmosphere that promotes human kindness.
Goals	G1: Efficient regulation of all facets of insurance. (GP-1) G2: Safeguard / enhance tax revenue. (GP-1) G3: Maintain accreditation by the National Association of Insurance Commissioners. (GP-1) G4: Manage insurance crises effectively. (GP-5) G5: Prevent loss of life and property through fire safety. (GP-5)

Critical Issues

Internal ICI1: Personnel plan for succession / training. (G1)
Internal ICI2: Catastrophe management. (G4)

External ECI1: Funding stability. (G2)
External ECI2: Pre-need regulation crises. (G1)
External ECI3: Catastrophe management. (G4)
External ECI4: Federal intervention into state regulation of insurance. (G1)
External ECI5: Anti-fraud efforts. (G1)

Strategies

- 1). ALDOI will implement and execute a legislative plan to seek enactment of its package of bills for license reform, pre-need amendments, Interstate Compact, and fraud. (G1)
- 2). ALDOI has created and will maintain a team of managers to guide the Department through the NAIC accreditation process, as well as the post-accreditation maintenance period. (G3)
- 3). ALDOI will develop and follow internal and external catastrophe management plans to continue the operation of the Department and to stabilize the State’s insurance market in the event of a catastrophic occurrence. (G4)

Workloads							Performance Indicator	
Number of licenses							Number	
FY 07 Projected: 80,637							FY 07 Target: 91,313	
FY07 Quarterly Projections:	1 st Qtr:	89318	2nd Qtr:	89983	3 rd Qtr:	90648	4 th Qtr:	91313
Number of rate and form filings.							Number	
FY 07 Projected: 26,392							FY 07 Target: 26,425	
FY07 Quarterly Projections:	1 st Qtr:	6606	2nd Qtr:	6606	3 rd Qtr:	6606	4 th Qtr:	6607
Number of consumer inquiries and complaints							Number	
FY 07 Projected: 16,373							FY 07 Target: 5,958	
FY07 Quarterly Projections:	1 st Qtr:	1489	2nd Qtr:	1489	3 rd Qtr:	1490	4 th Qtr:	1490
Number of regulated activities							Number	
FY 07 Projected: 9,031							FY 07 Target: 9,773	
FY07 Quarterly Projections:	1 st Qtr:	2443	2nd Qtr:	2443	3 rd Qtr:	2443	4 th Qtr:	2444

Objectives						Performance Indicator		
Spending	Increase spending by 1.2%.					Dollars		
FY 07 Projected: 17,626,346 FY 07 Target: 18,049,481								
FY07 Quarterly Projections:	1 st Qtr:	4512370	2nd Qtr:	4512370	3 rd Qtr:	4512370	4 th Qtr:	4512371
Staffing	Increase staffing by 13%.						#of FTE staff	
FY 07 Projected: 161 FY 07 Target: 185								
FY07 Quarterly Projections:	1 st Qtr:	169	2nd Qtr:	174	3 rd Qtr:	180	4 th Qtr:	185
Efficiency	Maintain cost to generate \$1 of revenue to General Fund, Education Trust Fund, Mental Health Fund and Insurance Dept. Fund at or below \$0.06.						Cost/ revenue	
FY 07 Projected: 0.06 FY 07 Target: 0.06								
FY07 Quarterly Projections:	1 st Qtr:	0.06	2nd Qtr:	0.06	3 rd Qtr:	0.06	4 th Qtr:	0.06

	Maintain cost of regulation at or below \$1 per \$1,000 of premiums written.						Cost/ \$1,000 of premiums	
FY 07 Projected: 1		FY 07 Target: 1.0						
FY07 Quarterly Projections:	1 st Qtr:	1.00	2nd Qtr:	1.00	3 rd Qtr:	1.00	4 th Qtr:	1.00

Quality	Process life and health rate and form filings within 20 days of receipts.							Average days	
FY 07 Projected: 30		FY 07 Target: 20							
FY07 Quarterly Projections:	1 st Qtr:	20	2nd Qtr:	20	3 rd Qtr:	20	4 th Qtr:	20	
	Perform fire safety inspection within 30 days of receipt							Average days	
FY 07 Projected: 30		FY 07 Target: 20							
FY07 Quarterly Projections:	1 st Qtr:	30	2nd Qtr:	30	3 rd Qtr:	30	4 th Qtr:	30	

Source of Funds			
Fund Code	Fund Name	Requested FY 07	Budgeted FY 07
0341	Examiners Revolving Fund	\$6,218,530	\$6,357,589
0341	Fire Marshal Fund	\$1,083,188	\$1,103,120
0341	Insurance Department Fund	\$10,261,235	\$10,523,483
0341	Service Contract Fund	\$63,393	\$65,289
Total of all Funds Listed Above:		\$17,626,346	\$18,049,481

RESPONSE TO SIGNIFICANT ITEMS



BOB RILEY
GOVERNOR

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
201 MONROE STREET, SUITE 1700
POST OFFICE BOX 303351
MONTGOMERY, ALABAMA 36130-3351

TELEPHONE: (334) 269-3550
FACSIMILE: (334) 241-4192
INTERNET: www.aldoi.gov

October 16, 2007

WALTER A. BELL
COMMISSIONER

ASSISTANT COMMISSIONER
REN WHEELER

DEPUTY COMMISSIONER
D. DAVID PARSONS

CHIEF EXAMINER
RICHARD L. FORD

STATE FIRE MARSHAL
EDWARD S. PAULK

GENERAL COUNSEL
REYN NORMAN

RECEIVER
DENISE B. AZAR

LICENSING MANAGER
JIMMY W. GUNN

Mr. John Norris
Director, Operational Division
Examiners of Public Accounts
Post Office Box 302251
Montgomery, Alabama 36130-2251

RE: Department of Insurance
Sunset Committee Report

Dear Mr. Norris:

In accordance with your letter to me dated September 24, 2007, attached please find this Department's responses to the significant items identified in the last sunset report prepared by your office for the Sunset Committee.

Please let me know if anything further is needed.

Very truly yours,

Walter A. Bell
Commissioner of Insurance

WAB/RN/lc

Enclosure

SIGNIFICANT ITEMS

None.

STATUS OF PRIOR FINDINGS

1. National Regulation of Insurance ...

The Department concurs with the findings of the examiner. It should be noted that the Alabama Legislature's prompt enactment of the new Producer Licensing Act in 2001, in response to the Gramm-Leach-Bliley Financial Modernization Act of 1999, was a major step toward holding off the effort to regulate insurance at the national level. Enacting the Interstate Compact discussed in Item 1 will go further in protecting the state's regulatory program. It should be noted that the "SMART Act" was never introduced in Congress, perhaps in part because the Alabama Legislature adopted resolutions encouraging the Alabama Congressional delegation to oppose this act if it was introduced.

A small part of the SMART proposal dealt with surplus line tax collection and interstate regulation of reinsurance, which we supported as we felt it would not interfere with our state efforts. A separate bill has been introduced this year to address these reforms. The Nonadmitted and Reinsurance Reform Act of 2007, H.R. 1065, passed the House on June 25, 2007. We do not know if this bill will move in the Senate. A bill we oppose, the National Insurance Act of 2007, S. 40, provides for an optional federal charter for insurance companies, whereby they could choose to be regulated by the state or the federal agency, much like banks are able to do.

2. The Department of Insurance is not Carrying Out its Duties to Determine Insurance Agents' Criminal Histories ...

While the Department concurs with the factual findings of the examiner, we respectfully disagree with the conclusion that we are not effectively carrying out our duty. With increased awareness of the duties and responsibilities placed back on insurers under the Insurance Fraud Prevention Act, 18 U.S. Code 1033, we believe insurers are doing a better job of screening their applicants before submitting them to us, plus we have added specific references to the federal act on our license applications. Additionally, beginning in 2005, we began conducting a limited search of public records on all new resident applicants for

license. Since 2006, we also conduct this search on all resident renewal applications.

In addition, as a part of the national uniformity effort among all states, we will seek to gain approval to collect fingerprints of all licensed insurance producers and conduct full background investigations.

3. Insurance Fraud Unit not in Place in Alabama ...

An Insurance Fraud Division was created effective January 1, 2002, using funds disbursed by order of Judge Walker on October 15, 2000. This division currently employs one attorney from the Legal Division and two investigators. On July 15, 2005, as a part of a departmental reorganization, the insurance consumer specialists were placed in a separate division with the insurance fraud unit. It is anticipated that additional attorneys and investigators will be hired for this division. The Insurance Fraud bill was again introduced in the 2007 regular session as House Bill 333 by Representative Hill, but it did not pass.

4. Lack of Jurisdiction – Third Party Administrators.

The Department concurs with the findings of the examiner. We have drafted legislation that can be introduced in a future session of the Legislature .

5. Lack of Authority – Service Contractor Provider Agents.

The Department concurs with the findings of the examiner. We have drafted legislation that can be introduced in a future session of the Legislature.

6. Implementation of Alabama Preneed Funeral and Cemetery Act ...

The Department concurs with the findings of the examiner. Additional staff positions are included in the current budget. We have participated in drafting legislation that was introduced in 2005, 2006 and 2007.

7. Unauthorized Permit and Fee for Weekly Testing of Fire Protection Sprinkler Systems.

The Fire Marshal discontinued the issuance of the “Weekly Test Permits” and developed a regulation by which he can verify the existence of conditions for the “skilled worker” exemption from the contractor permit.

Amended Regulation 482-1-103-.01, effective June 1, 2007, deletes reference to a \$200 “biennial test permit” fee. The Fire Marshal has neither issued the “biennial test permits,” nor collected that \$200 “test permit” fee since mid-2006. The amended regulation implements the “skilled worker” exemption specifically recognized by Ala. Code § 34-33-3 and prescribes a \$100 annual fee for a “skilled worker” certificate. The reason for both the since-discontinued “biennial test permit” approach and, now, the exemption approach is somewhat simple – system owners do not want to incur the added expense of engaging permitted contractors to do weekly pump tests and permitted contractors themselves are not interested in trying to provide weekly testing service.

Independent of the Act, the Fire Marshal has (i) the statutory duty of enforcing laws relating to “[i]nstallation and maintenance of automatic and other fire alarm systems and fire extinguishing equipment,” Ala. Code § 36-19-2(3); and (ii) the authority to “make regulations for fire prevention and protection of any construction or building, exists or other safety measures . . .” Ala. Code § 36-19-9. Insurance Department regulation 482-2-101 (specifically rule 482-2-101-.01), promulgated under the authority of § 36-19-9, adopts the National Fire Codes (2003 ed.) of the National Fire Protection Association. Chapter 8 of NFPA 25 imposes, as a code requirement, that fire pump assemblies be tested on a weekly basis with “[q]ualified operating personnel” in attendance [NFPA 25, subsection 8.3.2.1]. In other words, sprinkler system owners must provide for and, as necessary, document weekly fire pump testing in order to comply with the State’s fire codes.

Fire pump testing is within “the business of installation, repair, alteration, addition, maintenance, or inspection of fire protection sprinkler systems” for which a fire protection sprinkler contractor is licensed under the Act. See Ala. Code §§ 34-33-1(1), 34-33-3. A system owner can comply with the code testing requirement by engaging a licensed fire protection sprinkler contractor to perform that testing. The fire codes, however, only require “qualified operating personnel,” not a contractor holding some form of State-issued permit. The Act itself does not require a contractor permit in this setting: the Act is inapplicable to “skilled workers” – of fire protection sprinkler system owners – “who regularly and routinely design, install, repair, alter, add to, maintain, and inspect sprinkler systems on and within the premises of their employer, provided such systems are for the owners’ use only.” Ala. Code § 34-33-3. So, a “skilled worker” can perform testing without the need to hold a permit as a fire protection sprinkler contractor and that worker’s

employer can comply with the fire code testing requirements without separately engaging a permitted contractor.

The Examiners implicitly question the Fire Marshal's authority to address the "skilled employee exemption" and explicitly conclude that the Fire Marshal has no legal authority to prescribe a fee for a "skilled worker exemption certificate." Yet, "administration" of the Act is vested in the Fire Marshal. Ala. Code § 34-33-2. Though "administration" surely carries implied authority to enact reasonable regulations for purposes of administering and enforcing the Act, the Fire Marshal otherwise has statutory authority independent of the Act to "make regulations for fire prevention and protection of any construction or building, exits or other safety measures . . ." Ala. Code § 36-19-9. The "exemption certificate" does nothing more than evidence that the employee has the requisite knowledge, training, and skill to perform weekly pump testing. It accomplishes two purposes – it documents that such workers are the "qualified operating personnel" required under the fire codes to do the pump testing and it administers the Act's provision that the Act does not apply to "skilled workers" (so those "qualified operating personnel" need not be permitted contractors). The Act itself is nothing but a specific aspect of "fire prevention and protection of any construction or building, exits or other safety measures" as expressed in § 36-19-9. We are confident that the "skilled employee exemption" now defined and implemented by rule 482-1-103-.02 is within the Fire Marshal's legal authority taking all cited Code sections together. The Act does not define a "skilled worker," so this is certainly within the Fire Marshal's discretion as a matter of rule-making.

8. Improper Sprinkler Contractor Permit Fee.

The Fire Marshal now only collects the \$200 fee which is set forth in the formally adopted administrative rule for renewals and reinstatements. Initial applications are subject to the \$100 fee set forth in the statute and the administrative rule as amended effective June 1, 2007.

According to Ala. Code § 34-33-2, "[a]dministration of this chapter is vested in the State Fire Marshal who shall have the power to **set or make changes in the amount of the fee charged** as necessary for the administration and enforcement of this chapter" [emphasis added]. The obvious intent of this section is to grant the Fire Marshal broad authority to "administer" the provisions of the Act, including authority to determine that various fees beyond the contractor permit and renewal fees are necessary for administration and enforcement and to then decide

the amount of those fees. Given this intent, use of “fee” in the section is an obvious drafting error that cannot be afforded controlling (or, indeed, any) weight. *State Farm Automobile Ins. Co. v. Reaves*, 292 Ala. 218, 225, 292 So.2d 95 (1974).

A narrow reading – that “fee” means either the initial contract permit fee or a renewal fee (or both, even though the singular is used) – frustrates the otherwise apparent legislative intent that responsibility for “administering” the Act rest with the Fire Marshal. The Examiners suggest a legislative amendment – perhaps to add an “s” to the word “fee” in § 34-33-2. This course is under consideration but, respectfully, is not necessary to recognize the actual legislative intent.